

Annual Administration Report of the Civil Veterinary Department in India for 1902-03. Foolscap. Paper cover. 12s. or 1s. (2a.)

FOREIGN DEPARTMENT.

Report on the Working of the Thagi and Dakaiti Department for 1902. F'cap. Paper cover. 9s. or 10d. (2a.)

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Report on the Administration of Berar for the year 1902-03. Foolscap. Board. Rs. 2 or 3s. (2a.)

FINANCE AND COMMERCE DEPARTMENT.

List of Officers in the Finance and Commerce Department. Corrected to April, June to September 1903. 4s. or 5d. (1a.) each.

Abstract of the Principal Civil Leave and Pension Rules (Revised), 1903. Royal 8vo. Paper cover. 4s. or 5d. (1a.)

Abstract of the Leave and Pension Rules applicable to Bishops and Chaplains (Revised), 1903. Royal 8vo. Paper cover. 4s. or 5d. (1a.)

Abstract of the Leave and Pension Rules applicable to Judges of the High Courts and Legal officers (Revised), 1903. Royal 8vo. Paper cover. 4s. or 5d. (1a.)

Abstract of the Leave and Pension Rules applicable to the Bengal Pilot Service (Revised), 1903. Royal 8vo. Paper cover. 4s. or 5d. (1a.)

Report of the Administration of the Mints at Bombay and Calcutta for the year 1902-03. F'cap. Paper cover. Re. 1 or 1s. 6d. (2a.)

Schedule IV of the Indian Tariff Act (VIII of 1878), 1903 Edn. 6s. or 7d. (1a.)

Statistics compiled from the Finance and Revenue Accounts of the Government of India—Receipts and Disbursements of Home and Indian Accounts from 1st April 1894 to 31st March 1902. 1903 Edn. F'cap. Board. Rs. 2 or 3s. (9a.)

STATISTICAL DEPARTMENT.

Trade and Navigation Accounts of British India for the months of August 1903 to January 1904. Royal 8vo. Stitched. 8s. or 9d. (2a.) each.

Accounts of the External Land Trade of British India for the months of July to November 1903. Royal 8vo. Stitched. 8s. or 9d. (2a.) each.

Statistics of Cotton Spinning and Weaving in the Indian Mills in July to December 1903, and in the corresponding months of 1901 and 1902. Royal 8vo. Stitched. 2s. or 2d. (1a.) each.

Accounts of the Trade carried by Rail and River in India in the official year 1902-03 and the four preceding years. Fifteenth issue, 1903. F'cap. Board. Re. 1 or 1s. 4d. (6a.)

Accounts relating to the trade carried by Rail and River in India in the quarter ending June 1903, compared with the corresponding periods of the years 1901 and 1902. No. 1 of 1903-04. F'cap. Paper cover. 8s. or 9d. (3a.)

Annual Statement of the Trade and Navigation of British India with Foreign countries and of the Coasting Trade in the year ending March 31st 1903. Vol. II (Coasting Trade and Trade of each Port in each Province). Rs. 2 or 3s. (8a.)

Financial and Commercial Statistics of British India, 10th issue, 1903. F'cap. Board. Rs. 4 or 6s. (12a.)

Accounts of the Trade of the French Possessions in India in the year ending 31st March 1903 and the four preceding years. Foolscap. Paper cover. 2s. or 3d. (1a.)

Area and Yield of certain Crops for various periods from 1891-92 to 1902-03. Foolscap. Paper cover. 5s. or 6d. (2a.)

Accounts of the Trade of the Portuguese Possessions in India in the year 1901-02 and the four preceding years. 1904 Edn. F'cap. Paper cover. 2s. or 3d. (2a.)

Agricultural Statistics of India for the years 1897-98 to 1901-02 in two parts, 18th issue. 1904 Edn. F'cap. Board. Rs. 3-8 or 5s. 3d. (12a.)

Accounts relating to the Trade carried by rail and river in India in the quarter and in the six months ending September 1903, compared with the corresponding periods of the years 1901 and 1902, No. 2 of 1903-04. F'cap. Paper cover. 8s. or 9d. (3a.)

Accounts of the Trade of Aden in the year ending 31st March 1903 and the four preceding years. F'cap. Paper cover. 10s. or 1s. (2a.)

ACCOUNTANT-GENERAL, BENGAL.

History of Services of Gazetted and other officers serving under the Government of Bengal, corrected to 1st July 1903. Royal 8vo. Limp cover. Part I. Rs. 3 or 4s. 6d. (7a.); Part II. Rs. 2 or 3s. (6a.) Complete, Rs. 5 or 7s. 6d. (12a.)

MILITARY DEPARTMENT.

Rules for the Guidance of Troops and Umpires at Field Manœuvres. Royal 16mo. Paper cover. 1s. (1a.)

Infantry Training, 1902, in Urdu, Hindi and Gurmukhi. Royal 8vo. Paper cover. 6s. or 9d. (2a.) each.

PUBLIC WORKS DEPARTMENT.

Administration Report of the Indian Telegraph Department for 1902-03. F'cap. Paper cover. 8s. or 9d. (2a.)

Histories of Railway Projects, including Tramways, corrected up to 30th June 1903. F'cap. Paper cover. Rs. 2 or 2s. 8d. (4a.)

Report of the Railway Commission assembled in Madras in February 1903 to consider the question of effecting broad-gauge railway communication between India and Ceylon. F'cap. Limp cover. Rs. 2 or 3s. (5a.)

Public Works Department Classified List and Distribution Return of Establishment, corrected up to 31st December 1903. Super-royal 8vo. Paper cover. Rs. 2 or 3s. (4a.)

List of new books for sale at Thomason College, Roorkee, which were not advertised before.

- Roorkee Treatise on "Railways," 4th Edition, revised by F. Wolly Dod, F.C.E. Price, Rs. 3 per copy.
 Roorkee Treatise on "Irrigation Work." By Lieutenant-Colonel J. Clibborn, I.S.C., B.A., L.C.E., C.I.E. Price, Rs. 9 per copy.
 Roorkee Treatise on "Sanitary Engineering." Compiled by Lieutenant-Colonel J. Clibborn, I.S.C., B.A., L.C.E., C.I.E. Price, Rs. 4-8 per copy.
 Roorkee Manual of "Applied Mechanics," Volume II. The stability of structures mostly by graphic methods, by Lieutenant-Colonel J. H. C. Harrison, B.E. Price, Rs. 8-2 per copy.
 Roorkee Manual of Hydraulics. Price per copy, Re. 1-4. (No. XIX, Elementary Treatise.) By E. F. Tipple, Esq., B.A.
 Designs for Wooden Bridges, together with rules for calculating the area of waterway, etc., and Plates. By late Rai Bahadur Kunhya Lal. Price per set, Rs. 4-2
 Pamphlet on Examination for Acid Radicals: Tables giving Analysis of Acids. Price per copy, 8a.
 Pamphlet on Examination for Acid Bases: Tables giving Analysis of Metallic Bases. Price, 8a. per copy.

A list of new books and periodicals for sale at the Library of the Asiatic Society of Bengal, 57 Park Street, Calcutta.

ASIATIC SOCIETY'S PUBLICATIONS.

- Journal, Part II, No. 4 of 1903, at Rs. 2.
 " Part III, No. 2 of 1903, at Rs. 2.
 Proceedings Nos. 6 to 10 of 1903, at 8a.

BIBLIOTHECA INDICA.

- Catapatha Brahmana. Vol II, Fasc. 1, 2 at 6a.
 Mahabhashyaprodipodyata. Vol. II, 9 and 10 at 6a.
 Upamitibhābapropancha katha. Vol. 1, at 6a.
 Tantravartika (English). Fasc. 1, at 12a.
 Clokavartika (English). Fasc. 4, at 12a.
 Nityacara Prodipa. Fasc. 2, 3 at 6a.
 Vidhana Parijata. Fasc. 3, 4 at 6a.
 Markandeya Puran (English). Fasc. 7, at 12a.
 Trikanamandanam. Fasc. 3, at 6a.
 Kalairveka. Fasc. 6, at 6a.
 Srdhakriya Kaumudi. Fasc. 4, 5 at 6a.
 Bal Bhatta. Vol. 1, Fasc. 1, at 6a.
 Bandhayana Sranta Sutra. Fasc. 1, at 6a.
 Catasahasrika-Frajanaparamita. Vol. 1, 6 at 6a.
 Vallala Charitam. Fasc. 1, at 6a.
 Sanskrit Catalogue of printed books and manuscripts. Fasc. 4, at Rs. 2.

List of Books published by the Meteorological Department during the current quarter.

- Monthly Weather Review, October 1903. By W. L. Dallas (illustrated by six plates). Quarto. Paper cover. Re. 1.
 Monthly Weather Review, November 1903. By W. L. Dallas (illustrated by six plates). Quarto. Paper cover. Re. 1.
 Monthly Weather Review for December 1903. By W. L. Dallas (illustrated by 6 plates). Quarto. Paper cover. Re. 1.
 Indian Meteorological Memoirs, Vol. XV, Part III. By R. L. Jones. Quarto. Paper cover. Re. 1.
 Indian Meteorological Memoirs, Vol. XVII. By Sir John Eliot. Quarto. Paper cover. Rs. 3.

List of Books published by the Meteorological Department from 1st October 1903 to 31st March 1904.

- Annual Summary of the Monthly Weather Review, 1902. By Sir John Eliot (illustrated by 6 plates). Quarto. Paper cover. Rs. 3.
 Monthly Weather Review of India, May 1903. By W. L. Dallas (illustrated by 5 plates). Quarto. Paper cover. Re. 1.
 Monthly Weather Review of India, June to October 1903. By W. L. Dallas (illustrated by 6 plates). Quarto. Paper cover. Re. 1 per month.
 Indian Meteorological Memoirs, Vol. XVI, Part I. By Sir John Eliot. Quarto. Paper cover. Rs. 3.



The Calcutta Gazette.

WEDNESDAY MARCH 2, 1904.

PART III.

Act of the Bengal Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

THE following Act, passed by the Lieutenant-Governor of Bengal in Council, received the assent of His Honour on the 16th February, 1904, and, having been assented to by His Excellency the Viceroy and Governor General on the 27th idem, is hereby published for general information :—

BENGAL ACT NO. I OF 1904.

An Act to amend the Bengal Tramways Act, 1883.

WHEREAS it is expedient to amend the Bengal Tramways Act, 1883; Ben. Act III of 1883.

It is hereby enacted as follows :—

Short title. 1. This Act may be called the Bengal Tramways (Amendment) Act, 1904.

Amendment of 2. After the word "shorter," in the proviso to section 41 Ben. Act III of 1883, of the Bengal Tramways Act, 1883, the words "or longer" shall be inserted.

CALCUTTA;
The 1st March, 1904.

F. G. WIGLEY,
Secretary to the Bengal Council.



The Calcutta Gazette.

WEDNESDAY, MARCH 9, 1904.

PART III.

Acts of the Bengal Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

The following Act, passed by the Lieutenant-Governor of Bengal in Council, received the assent of His Honour on the 16th February, 1904, and, having been assented to by His Excellency the Viceroy and Governor General on the 1st March, 1904, is hereby published for general information:—

BENGAL ACT No. II of 1904.

An Act for the regulation of Public Parks in Bengal.

WHEREAS it is expedient to protect public parks and gardens in Bengal from injury, and to secure the public from molestation and annoyance while resorting to such parks and gardens; It is hereby enacted as follows:—

Short title and application. 1. (1) This Act may be called the Bengal Public Parks Act, 1904.

(2) It applies to the public parks and gardens mentioned in the Schedule, and may be applied to any other public park or garden in Bengal by order of the Local Government published in the Calcutta Gazette.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “park” means any public park or garden to which this Act applies by virtue of section 1, sub-section (2), or any order published thereunder;

(b) “superintendent” means the person in executive charge of a park; and, for the purposes of section 6, sub-section (2), includes also—

(i) an assistant superintendent of a park, and

(ii) any member of the Managing Committee (if any) of a park; and

(The Bengal Public Parks Act, 1904.—
sections 3, 4.)

(c) "park-durwan" means any person appointed by the superintendent, or by the authority to whom the superintendent is subordinate, to act as a durwan of the park.

Power to extend boundaries of park.

3. The Local Government may, by notification in the Calcutta Gazette, declare that any specified land, bridge or pontoon shall, for the purposes of this Act, be deemed to be included in any park.

Power to make rules.

4. (1) The Local Government may make rules for the management and preservation of any park, and for regulating the use thereof by the public.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

- (a) regulate the admission of persons, horses and ponies, and carriages, palanquins and other conveyances, into the park, and prescribe fees to be paid therefor;
- (b) prohibit or regulate the bringing of dogs, motor cars, bicycles or tricycles into the park;
- (c) prohibit the doing of all or any of the following things by persons other than employes of the park, that is to say, plucking or gathering anything growing in the park, breaking trees, branches or plants, cutting names or marks on trees, disfiguring buildings, furniture or monuments, removing or disfiguring labels or marks attached to trees or plants;
- (d) prohibit the purchase of any produce of the park otherwise than from the superintendent or some other authorised person;
- (e) prohibit shooting, bird-nesting, the catching of butterflies, or any act of cruelty;
- (f) prohibit or regulate fishing or boating, and prescribe fees to be paid by persons obtaining permission to fish or to use boats;
- (g) prohibit bathing or the pollution of water by any other means;
- (h) prohibit the grazing of horses or ponies;
- (i) prohibit the teasing or annoying of animals or birds kept in the park;
- (k) prohibit the commission of any nuisance, or the molestation or annoyance of any person resorting to the park.

(3) In making any rule under this section, the Local Government may direct that a breach thereof shall be punishable with fine which may extend to one hundred rupees.

(4) The power to make rules under this section is subject to the condition that they shall be made after previous publication.

(5) All rules made under this section shall be published in the Calcutta Gazette.

*(The Bengal Public Parks Act, 1904—
sections 5-9.)*

Exhibition of
copies of notifi-
cations and
rules in park.

5. One or more copies, in English and in one or more vernacular languages, of every notification published under section 3, and of all rules made under section 4 for observance by persons resorting to a park, and for the time being in force, shall be put up in the park in such conspicuous manner as the superintendent may deem best calculated to give information to such persons.

Refusal of
offender to
give name and
residence.

6. (1) If any person who, in the presence of a park-durwan in uniform, has committed or has been accused of committing a breach of any rule made under section 4, and who is unknown to such durwan, refuses, on demand of such durwan, to give his name and residence, or gives a name or residence which such durwan has reason to believe to be false, such person may be detained by such durwan in order that his name or residence may be ascertained.

(2) When any person is detained under subsection (1), he shall forthwith be taken to the superintendent; or, if the superintendent be not present in the park or its immediate precincts, such person shall be taken to the nearest police-station, or, if he so requests, to the nearest Magistrate having jurisdiction to try him.

(3) If the true name and residence of any person so taken to the superintendent be not ascertained within a reasonable time, the superintendent shall forthwith send for an officer of police, and shall detain the offender until the arrival of such an officer, and shall then deliver him into the custody of such officer to be taken to the nearest police-station.

(4) If the true name and residence of any person taken to a police-station under this section be not ascertained within a reasonable time, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction to try him.

(5) When the true name and residence of any person detained under this section have been ascertained, he shall be allowed to depart.

(6) No person shall be detained under this section for a longer period than twelve hours.

Superinten-
dent and park-
durwan deemed
"public
servants."

7. Every superintendent and park-durwan shall, for the purpose of the Indian Penal Code, XLV of 1860, be deemed to be a public servant.

General pow-
ers, duties,
etc., of park-
durwan.

8. Every park-durwan shall, in addition to any powers and immunities specially conferred on him by this Act or by rules made hereunder, have, within the limits of the park to which he is appointed, all such powers, privileges and immunities, and shall, within the said limits, be liable to all such duties and responsibilities, as a police-constable has and is liable to within the limits of the police-station in which such park is comprised:

Provided that every park-durwan shall be subordinate to the superintendent.

General pow-
ers, etc., of
police-con-
stabiles.

9. Every police-constable employed within the limits of a police-station shall have, within any park comprised in such limits, the powers, privileges and immunities conferred by this Act and any rules made hereunder.

(The Bengal Public Parks Act, 1904.—Schedule.)

THE SCHEDULE.

PUBLIC PARKS AND GARDENS TO WHICH THIS
ACT APPLIES IN THE FIRST INSTANCE.

[See section 1, sub-section (2).]

The Royal Botanic Garden, Sibpur.
The Zoological Garden, Alipur.
The Eden Gardens, Calcutta.
The Lloyd Botanical Garden, Darjeeling.
The Victoria Pleasance, Darjeeling.

CALCUTTA:
The 7th March, 1904.

F. G. WIGLEY,
Secretary to the Bengal Council.

THE following Act, passed by the Lieutenant-Governor of Bengal in Council, received the assent of His Honour on the 18th February, 1904, and, having been assented to by His Excellency the Viceroy and Governor General on the 4th March, 1904, is hereby published for general information :—

BENGAL ACT No. III OF 1904.

An Act to facilitate the family settlement of estates in Bengal.

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SECTION.

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2. Definitions.

PART II.—*Application for permission to make a first settlement of an estate.*

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5. Declarations and draft to accompany application in the case of an estate belonging to a joint Hindu family or to co-sharers.
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SECTION.

27. Right of tenant for life to profits of settled estate.
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BENGAL ACT No. III OF 1904.

An Act to facilitate the family settlement of estates in Bengal.

WHEREAS it is expedient to facilitate the making of family settlements of estates by landholders in Bengal;

And whereas, the Bengal Land-revenue Sales Act, 1859, the Indian Succession Act, 1865, the Court-fees Act, 1870, the Indian Limitation Act, 1877, the Probate and Administration Act, 1881, the Transfer of Property Act, 1882, the Succession Certificate Act, 1889, and the Indian Stamp Act, 1899, having been passed by the Governor General of India in Council, the previous sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act;

XI of 1859.
X of 1865.
VII of 1870.
XV of 1877.
V of 1881.
IV of 1882.
VII of 1889.
II of 1899.

55 & 56 Vict.,
c. 14.

It is hereby enacted as follows:—

PART I.—Preliminary.

Sort title and extent. 1. (1) This Act may be called The Bengal Settled Estates Act, 1904; and

(2) It extends to the whole of Bengal.

Definitions. 2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) “estate” includes—

- (i) immoveable property,
- (ii) money, and securities for money, and
- (iii) any jewellery or other moveable property which should, in the opinion of the Local Government, be treated as heirlooms;

(b) “settled estate” means an estate in respect of which a settlement made under this Act is for the time being in force;

(c) “settlor” means the person who makes a settlement under this Act;

(d) “first tenant for life” means the settlor;

(e) “second tenant for life” means the person appointed by a settlement made under this Act to take a settled estate on the death of the first tenant for life, or who, on the surrender by the first tenant for life, takes his interest under the settlement;

(f) “third tenant for life” means the person appointed by a settlement made under this Act to take a settled estate on the death of the second tenant for life, or who, on the surrender by the second tenant for life, takes his interest under the settlement;

(g) “tenant for life” means a first, second or third tenant for life;

(h) “son” includes a son born after the execution of a settlement, and, in the case of anyone whose personal law permits adoption, includes also a son—

(i) duly adopted, either before or after the execution of a settlement, by the adoptive father himself, or

(ii) duly adopted to her deceased husband, within five years after his death, by a widow, acting under authority, in writing and registered, lawfully conferred on her by him in that behalf;

(The Bengal Settled Estates Act, 1904.—Part II.—Application for permission to make a first settlement of an estate.—Sections 3, 4.)

- (j) "secured debt" means a debt, demand or claim which is secured by way of a mortgage, charge or lien on specified property and is primarily enforceable against such property;
- (k) "unsecured debt" means a debt, demand or claim (other than a secured debt) for any sum exceeding five hundred rupees, which is enforceable against the person or general property of the debtor;
- (l) "secured creditor" means a person who is entitled to enforce payment of a secured debt;
- (m) "unsecured creditor" means a person who is entitled to enforce payment of an unsecured debt;
- (n) "incumbrance" means a secured debt, or an unsecured debt, or both;
- (o) the expression "the Collector," when used with reference to any estate, means the Collector of the district in which the estate or any part thereof is situated; and
- (p) the expression "the Civil Court," when used with reference to any estate, means the principal Civil Court having original jurisdiction in the area in which the estate or any part thereof is situated.

(2) A person shall be deemed, for the purposes of this Act, to be "competent to contract" if he is of the age of majority according to the law to which he is subject, and is of sound mind, and is not disqualified from contracting by any law to which he is subject.

(3) All words and expressions used in this Act, which are defined in the Transfer of Property Act, 1882, shall have the same meaning as in that Act.

IV of 1882.

Part II.—Application for permission to make a first settlement of an estate.

Who may apply for permission to settle an estate.

3. (1) Any landholder may apply to the Local Government for permission to make a settlement of an estate under this Act,—

- (a) if he is competent to contract,
- (b) if he is in possession of the estate, either in his own right or along with or on behalf of others, and
- (c) if the estate is held in permanent, heritable and transferable right:

(2) Provided that no application may be made under subsection (1) in respect of any estate—

- (i) unless the applicant is solely entitled to the estate, or
- (ii) if the estate belongs to a joint Hindu family—unless the applicant is the *karta* or managing member of the family, or
- (iii) if the estate belongs to co-sharers—unless the applicant is a principal shareholder in the estate and has, by custom or with the consent of his co-sharers, the sole right of management over the estate.

Signature, verification and contents of application.

4. (1) Every such application must be in writing, and must be signed by the applicant and verified by him in the manner prescribed in section 52 of the Code of Civil Procedure for the verification of plaints. XIV of 1882.

(2) Every such application must contain the following particulars, namely:—

- (a) a description of the estate, sufficient for its identification;
- (b) a statement of the income yielded annually by the property comprised in the estate, and the revenue, rates and taxes due to the Government or any Local Authority annually in respect of such property; and
- (c) a list giving a full and complete enumeration and description of all incumbrances held by secured and unsecured creditors, respectively, and enforceable against the applicant or the estate; with the name and address of each such creditor, and a correct statement of the amount due to each such creditor.

(The Bengal Settled Estates Act, 1904.—Part II.—Application for permission to make a first settlement of an estate.—Sections 5-7.)

Declarations and draft to accompany application in the case of an estate belonging to a joint Hindu family or to co-sharers.

5. (1) If any estate in respect of which an application is made under section 3 belongs to—

(a) a joint Hindu family, or

(b) co-sharers,

the application must be accompanied by—

(i) a sworn declaration by the applicant,—

in case (a), that he is the *karta* or managing member of the family, or

in case (b), that he is a principal shareholder in the estate and has, by custom or with the consent of his co-sharers, as the case may be, the sole right of management over the estate; and

(ii) a sworn declaration, in case (a), by the other co-owners, or in case (b) by the other co-sharers, that they are willing to assent to the estate being settled under this Act; and

(iii) a draft of the proposed instrument of settlement.

(2) If any of the said other co-owners or co-sharers is, at the time when the application is made, a minor, a declaration under clause (ii) of sub-section (1) may be accepted if it is

made on behalf of such minor by the guardian of his property or (when a guardian of his property cannot lawfully be appointed) the guardian of his person, appointed or declared under the Guardians and Wards Act, 1890, or any other law for the time being in force, and

VIII of 1890.

approved by an order in writing under the seal of the Court which appointed or declared the guardian.

(3) If any of the aforesaid other co-owners or co-sharers is, at the time when the application is made, a lunatic, a declaration may be accepted under clause (ii) of sub-section (1) if it is

made on behalf of such lunatic by his committee appointed under the Lunacy (Supreme Courts) Act, 1858, or the Lunacy (District Courts) Act, 1858, or any other law for the time being in force, and

XXXIV of 1858.
XXXV of 1858.

approved by an order in writing under the seal of the Court which appointed the committee.

Power to reject application.

6. The Local Government may, in its discretion, and after such inquiry (if any) as it may think fit to make, by written order reject any application made under section 3.

Transmission and notification of application.

7. If any application made under section 3 is not rejected under section 6, and if the Local Government is satisfied that the conditions specified in section 3 are fulfilled, and that the provisions of sections 4 and 5 have been duly complied with,

the Local Government shall send a copy of the application, and of the declarations which accompanied it, as also a copy of the draft of the proposed instrument of settlement, to each creditor who is named in the application, and to each person who has made a declaration in pursuance of clause (ii) of section 5;

and, with the previous sanction of the Governor General Council, shall publish a notification—

(a) setting forth the application [except the particulars inserted therein in pursuance of clause (b) of section 4] and the declarations which accompanied it;

(b) calling upon all creditors, whether secured or unsecured, holding or entitled to incumbrances enforceable against the applicant or the estate to which the application relates, and all other persons interested claiming to be interested in the estate, to send to

(The Bengal Settled Estates Act, 1904.—Part II.—Application for permission to make a first settlement of an estate.—Part III.—Provisions to be contained in first settlements.—Sections 8-10.)

the Local Government written notice of their incumbrances and interests, respectively, within a period of six months from the date of the notification, and

- (c) intimating that any objections to the proposed settlement, whether urged by creditors or by other persons interested in the estate, which may be communicated to the Local Government in writing within the said period, will be duly considered.

Rejection or approval of application after notification.

8. (1) At any time after the expiration of the said period, and after considering any notices and objections received under section 7, and after such inquiry (if any) as it may think fit to make, the Local Government may, in its discretion, by written order, either—

- (a) reject such application, or
(b) grant permission to make the proposed settlement, in respect either of the whole of the property to which the application relates or of any part thereof :

Provided that, if any incumbrances have been set forth in the application or brought to the notice of the Local Government, such permission shall not be granted unless—

- (i) the incumbrances are first discharged, or
(ii) a condition is made for the insertion in the settlement of provisions, to be assented to by the creditors and approved by the Local Government, for the discharge of the incumbrances, or for their continuance, with or without modification, and for the payment of interest thereon.

(2) If the right of the applicant to make the settlement is disputed by or on behalf of any person interested or claiming to be interested in the estate, the Local Government may, if it thinks fit, refer the matter in dispute to the Civil Court for decision, before determining whether to reject the application or to grant permission to make the proposed settlement; and the Civil Court shall, in dealing with any such reference, follow the procedure prescribed in the Code of Civil Procedure for the trial of suits, so far as the same may be applicable.

XIV of 1882.

(3) Every decision by the Civil Court under sub-section (2) shall be deemed to be a decree within the meaning of the Code of Civil Procedure; and an appeal therefrom shall lie to the High Court.

XIV of 1882.

Rejection no bar to making fresh application.

9. The rejection under section 6 or section 8 of an application for permission to make a settlement of an estate under the foregoing provisions of this Act shall be no bar to the making of a fresh application in respect of the same estate, if the applicant shows sufficient reason for so doing.

PART III.—Provisions to be contained in first settlements.

Settlement of estates for three generations.

10. (1) Every settlement made under the foregoing provisions of this Act in respect of any estate shall provide that the estate shall be held for life—

- (a) by the settlor, as first tenant for life;
(b) and thereafter, by the second tenant for life, who shall be the eldest or only son of the first tenant for life;
(c) and thereafter, by the third tenant for life, who shall be the eldest or only son of the second tenant for life.

(2) Every such settlement shall further provide,—

- (i) if the estate is one to which the settlor was, immediately before the execution of the settlement, solely entitled—that, after the life of the third tenant for life, the eldest or only son of such tenant shall hold the estate absolutely;

(The Bengal Settled Estates Act, 1904.—Part III.—Provisions to be contained in first settlements.—Sections 11, 12.)

(ii) if the estate belonged, immediately before the execution of the settlement, to a joint Hindu family—that, after the life of the third tenant for life, the eldest or only son of such tenant shall during his life be the *karta* or manager of the estate, but without prejudice to the rights of any persons who, but for the settlement, would be co-owners of the estate; and

(iii) if the estate belonged, immediately before the execution of the settlement, to co-sharers—that, after the life of the third tenant for life, the eldest or only son of such tenant shall have during his life the sole right of management over the estate;

but subject in each case to the terms of any fresh settlement made by a tenant for life in pursuance of permission granted under section 16.

(3) If the eldest or only son of the settlor has predeceased the settlor, or if the settlor desires to exclude such son from holding the estate on the ground of incapacity or defect of character which is proved by the settlor to the satisfaction of the Local Government, then, notwithstanding anything contained in the foregoing sub-sections, the Local Government may permit him to provide in the settlement—

(i) that the second tenant for life shall be another son of the settlor, if he has another son, or the eldest or only son of the son who has predeceased the settlor or has been excluded as aforesaid, and

(ii) that the third tenant for life shall be the eldest or only son of the second tenant for life, or the eldest or only son of the son who has predeceased the settlor or has been excluded as aforesaid.

(4) Any settlement made under the foregoing provisions of this Act may provide that any tenant for life may, with the previous sanction of the Local Government, by written instrument surrender his interest under the settlement in favour of the next tenant for life.

Further remainders.

11. Every settlement made under the foregoing provisions of this Act may also contain provisions for vesting the estate, in the event of the settlement on the second tenant for life or the third tenant for life or his son failing to take effect, in some other person descended from the settlor or the settlor's father in the direct male line.

Further provisions in settlements.

12. (1) Every settlement made under the foregoing provisions of this Act shall specify all incumbrances referred to in clause (i) of section 8.

(2) Every such settlement shall also contain such provisions as may be approved by the Local Government with regard to the following matters, namely:—

(a) the discharge of incumbrances on the estate, and the payment of interest thereon; or their continuance (with or without modification), and the payment of interest thereon;

(b) the maintenance of the co-owners and co-sharers (if any) by or on whose behalf a declaration has been made under clause (ii) of section 5, and of all persons who at the time of the execution of the settlement are, or thereafter may be, legally entitled to maintenance out of the estate;

(c) the management of the estate after the death of the settlor—

(i) during a period not exceeding five years after such death, pending the adoption of a son under the circumstances described in sub-clause (ii) of clause (h) of section 2, or

(ii) during the minority of the second tenant for life;

(The Bengal Settled Estates Act, 1904 — Part IV.—Supplementary settlements and fresh settlement.— Sections 13.)

(d) the management of the estate after the death of the second tenant for life—

(i) during a period not exceeding five years after such death, pending the adoption of a son under the circumstances described in sub-clause (ii) of clause (h) of section 2, or

(ii) during the minority of the third tenant for life;

(e) the management of the estate after the death of the third tenant for life—

(i) during a period not exceeding five years after such death, pending the adoption of a son under the circumstances described in sub-clause (ii) of clause (h) of section 2, or

(ii) during the minority of the next holder.

(3) If any settlement made under the foregoing provisions of this Act includes money, securities for money, or moveable property, the settlement shall contain such provisions as may be approved by the Local Government for vesting such money, securities or property in a trustee, for the investment or conversion of such money or securities in or into securities authorised by section 20 of the Indian Trusts Act, 1882, and for the payment to the trustee of expenses and remuneration in accordance with rules made under section 37, clause (c).

II of 1882.

Explanation.—The Official Trustee of Bengal, the Collector or any private person may be appointed to be a trustee for the purposes of this sub-section.

(4) In addition to the various matters hereinbefore specified, the Local Government may require or permit the insertion in any settlement made under the foregoing provisions of this Act of any provision which it may think fit, and may make its approval of the settlement conditional on the insertion of provisions which it has required to be inserted:

Provided that no provisions inserted in pursuance of this sub-section shall operate to the prejudice of any secured or unsecured creditor unless assented to by him.

PART IV—*Supplementary settlements and fresh settlements.*

Supplementary settlement in respect of property.

13. (1) At any time after a settlement has been made under the foregoing provisions of this Act, a tenant for life may apply to the Local Government for permission to make a supplementary settlement for the purpose of adding further property to the settled estate—

(a) if he is competent to contract,

(b) if he is in possession of such property, either in his own right or along with or on behalf of others, and

(c) if such property is held in permanent, heritable and transferable right:

(2) Provided that no application may be made under sub-section (1) in respect of any property—

(i) unless the applicant is solely entitled to the property, or

(ii) if the property belongs to a joint Hindu family—unless the applicant is the *karta* or managing member of the family, or

(iii) if the property belongs to co-sharers—unless the applicant is a principal shareholder in the property and has, by custom or with the consent of his co-sharers, the sole right of management over the property.

(3) The provisions of sections 4 to 9 shall apply to every application made under sub-section (1) in respect of any property, and the provisions of sections 10 to 12 shall apply to every settlement of such property, as if the property were an “estate” within the meaning of those sections.

(The Bengal Settled Estates Act, 1904.—Part IV.—Supplementary settlements and fresh settlements.—Sections 14-16.)

Power to apply for permission to make a supplementary settlement in respect of persons.

14. If, at any time after any settlement has been made under the foregoing provisions of this Act, the second tenant for life dies during the life of the settlor, or the settlor desires to exclude him from holding the estate on the ground of incapacity or defect of character which is proved by the settlor to the satisfaction of the Local Government,

the settlor may, if he is competent to contract, apply to the Local Government for permission to make a supplementary settlement for the purpose of appointing to be second tenant for life and third tenant for life, respectively, any other persons who might have been so appointed in pursuance of clauses (i) and (ii) of sub-section (3) of section 10.

Power to apply for permission to make a fresh settlement.

15. At any time after any settlement has been made under the foregoing provisions of this Act, a tenant for life of a settled estate may, if he is competent to contract, apply to the Local Government for permission to make a fresh settlement of the estate.

Procedure in dealing with applications under section 14 or 15.

16. (1) The provisions of section 4, sub-section (1), and section 9 shall apply to every application for permission to make a supplementary settlement in respect of persons or a fresh settlement.

(2) If any such application relates to an estate to which the settlor was, immediately before the execution of the former settlements, respectively, solely entitled, the Local Government may, in its discretion, and after such inquiry (if any) as it may think fit to make, by written order, either—

(i) reject the application, or

(ii) grant permission to make the proposed settlement.

(3) If any such application relates to an estate which belonged, immediately before the execution of the former settlements, respectively, to a joint Hindu family or to co-sharers, the application must be accompanied by a declaration by all persons (other than the applicant) who, but for such settlements, would be co-owners of or co-sharers in the estate, to the effect that they are willing to assent to the proposed settlement.

(4) If any of such co-owners or co-sharers is, at the time when the application is made, a minor or a lunatic, a declaration under sub-section (3) of this section may be accepted if it is made and approved as indicated in sub-section (2) or sub-section (3), as the case may be, of section 5.

(5) In every case referred to in sub-section (3) of this section, the Local Government

shall send a copy of the application, and of the declarations which accompanied it, to each person who has made a declaration in pursuance of that sub-section;

and, with the previous sanction of the Governor General in Council, shall publish a notification—

(a) setting forth the application and the declarations which accompanied it;

(b) calling upon all persons (other than creditors) interested or claiming to be interested in the estate, to send to the Local Government written notice of their interests within a period of six months from the date of the notification, and

(c) intimating that any objections by such persons to the proposed settlement, which may be communicated to the Local Government in writing within the said period, will be duly considered;

and, at any time after the expiration of the said period, and after considering any notices and objections received under this sub-section, and after such inquiry (if any) as it may think fit to make, may, in its discretion, by written order, either—

(i) reject the said application, or

(ii) grant permission to make the proposed settlement,

(The Bengal Settled Estates Act, 1904.—Part IV.—Supplementary settlements and fresh settlements.—Part V.—Settlements generally.—Sections 17, 18.)

Provisions as to fresh settlements.

17. (1) The provisions of sections 10, 11 and 12 shall apply to every fresh settlement made in pursuance of permission granted under section 16.

(2) All property which, immediately before the execution of a fresh settlement in respect of any estate, is included in any former settlement of the estate made under this Act, must be included in such fresh settlement.

(3) No property shall be included in any fresh settlement made under this Act in respect of any estate unless it is, immediately before the execution of such settlement, included in a former settlement of the estate made under this Act.

(4) If any incumbrance, which is dealt with in any former settlement made under this Act in respect of any estate, is still in existence at the time of the execution of a fresh settlement of the estate, then nothing contained in such fresh settlement shall affect the rights of the creditor unless assented to by him.

(5) Every fresh settlement made under this Act in respect of any estate shall, subject to the foregoing provisions of this section, supersede all former settlements made under this Act in respect of such estate.

PART V.—Settlements generally.

Approval, stamping and registration of settlements.

18. (1) No settlement made under this Act shall take effect unless the instrument of settlement—

- (a) is of a non-testamentary character,
- (b) is attested by two or more witnesses,
- (c) has been approved by the Local Government before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the Local Government,
- (d) bears a stamp of the full value prescribed by sub-section (2), or, if the sanction of the Board of Revenue has been given under sub-section (3), of one-third of such value, and
- (e) is registered within three months after the said approval has been certified as aforesaid.

(2) Every instrument of settlement made under this Act, not being a supplementary settlement referred to in section 14 or a fresh settlement referred to in section 15, shall, notwithstanding anything contained in the Indian Stamp Act, 1899, bear a stamp of a value equivalent to one-fourth of the annual net profits of the estate comprised in the settlement:

11 of 1899.

(3) Provided that a stamp of one-third of such value may be affixed, with the previous sanction of the Board of Revenue, on arrangements being made to its satisfaction for the affixing of stamps for the rest of such value at subsequent dates within three years from the date of the instrument.

(4) If any question arises, with reference to sub-section (2) or sub-section (3), as to the amount of the annual net profits of any estate, the decision of the Board of Revenue thereon shall be final.

(5) Every instrument making a supplementary settlement referred to in section 14 or a fresh settlement referred to in section 15 shall, notwithstanding anything contained in the Indian Stamp Act, 1899, bear a stamp of ten rupees.

11 of 1899.

(6) Subject to the foregoing provisions of this section, every instrument of settlement shall take effect from the date of its execution.

(The Bengal Settled Estates Act, 1904.—Part V.—Settlements generally.—Sections 19-23.)

Approval, stamping and registration of instruments of surrender.

19. (1) No instrument of surrender referred to in sub-section (4) of section 10 shall take effect unless it—

- (a) is of a non-testamentary character;
- (b) is attested by two or more witnesses;
- (c) has been approved by the Local Government before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the Local Government;
- (d) is stamped in accordance with the provisions of the Indian Stamp Act, 1899, and
- (e) is registered within three months after the said approval has been certified as aforesaid.

II of 1899.

(2) Subject to the foregoing provisions of this section, every such instrument shall take effect from the date of its execution.

Bar to application of succession laws, in respect of property comprised in settlement.

20. (1) Notwithstanding anything contained in the Indian Succession Act, 1865, the Probate and Administration Act, 1881, or the Succession Certificate Act, 1889, it shall not be necessary for any person to obtain probate or letters of administration, or a certificate under the last-mentioned Act, to admit of his taking any property or recovering any debt or realising any security in virtue of a settlement made under this Act.

X of 1865.
V of 1881.
VII of 1889.

(2) If any probate, any letters of administration or any certificate granted under the Succession Certificate Act, 1889, purports to cover any property, debt or security which is comprised in a settlement made under this Act, then, notwithstanding anything contained in Article 11 or Article 12 of Schedule I to the Court-fees Act, 1870, no court-fee shall be levied under either of those Articles in respect of such property, debt or security.

VII of 1889.

VII of 1870.

Power of Local Government to grant certificate after death of tenant for life.

21. At any time after the death of any tenant for life of a settled estate, any of the Secretaries to the Local Government may, upon the application of any person claiming a right to hold the settled estate under the instrument of settlement, grant a certificate to such person declaring him to be entitled to hold such estate under such instrument; and such certificate shall be presumed to be correct unless and until the contrary is proved.

Notification of instruments of settlement and instruments of surrender or revocation of settlement.

22. (1) When any instrument of settlement or surrender of settlement or revocation of settlement is registered, the registering-officer shall report the fact to the Local Government; and, on receipt of such report, the Local Government shall publish a notification stating the purport of the instrument and the office in which it has been registered.

(2) The Collector shall cause a copy of every such notification to be posted in his office, and to be published on the settled estate at such places and in such manner as may in his opinion be sufficient for giving information to tenants and other persons interested.

Abrogation of inconsistent laws.

23. No settlement or part of a settlement made under this Act shall be liable to be avoided or set aside by any Civil Court by reason only that it contravenes—

- (a) any provision of the Transfer of Property Act, 1882, or
- (b) any law or rule for the time being in force for the prevention of perpetuities, or
- (c) any family custom or any personal law or law of succession to which the family is subject,

IV of 1882.

which is inconsistent with the provisions of this Act.

(The Bengal Settled Estates Act, 1904.—Part VI.—Revocation, cancellation and amendment of settlements.—Part VII.—Rights and powers of tenant for life, and protection of settled estate during his life.—Sections 24-27.)

PART VI.—Revocation, cancellation and amendment of settlements.

Revocation of settlement by tenant for life.

24. (1) A tenant for life of a settled estate may, at any time, if he is competent to contract, apply to the Local Government for permission to revoke, either wholly or as respects any particular property, any settlement made under this Act.

(2) The Local Government, after considering the application, and the result of any inquiry made by it or under its orders, and any further particulars or information called for by it, may, in its discretion, by written order, either—

- (a) reject the application, or
- (b) grant the permission applied for, or
- (c) grant permission to revoke the settlement as respects such property only as may be specified in the order.

(3) When permission is granted under sub-section (2) to revoke a settlement, either wholly or as respects any particular property, the revocation shall not take effect unless the instrument of revocation—

- (i) is of a non-testamentary character,
- (ii) is attested by two or more witnesses,
- (iii) has been approved by the Local Government before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the Local Government,
- (iv) is stamped in accordance with the provisions of the Indian Stamp Act, 1899, and
- (v) is registered within three months after the said approval has been certified as aforesaid.

II of 1899.

(4) Subject to the foregoing provision of this section, every such instrument shall take effect from the date of its execution.

Cancellation or amendment of settlement by Local Government.

25. (1) Notwithstanding anything hereinbefore contained, the Local Government may at any time declare by notification that any settlement made under this Act in respect of a settled estate shall be deemed—

- (a) to be cancelled, or
- (b) to be amended so as to exclude any part of the estate described in the notification.

(2) On the publication of such notification the said settlement shall be deemed to be cancelled or amended as aforesaid, as the case may be.

Revival of incumbrances on revocation, cancellation or amendment of settlement.

26. When any instrument of settlement is revoked under section 24, or cancelled or amended under section 25, the rights of all persons having incumbrances on the estate shall, notwithstanding anything contained in the Indian Limitation Act, 1877, revive and be enforceable as if the settlement had not been made, but subject to any payments which were made while the settlement was in force.

XV of 1877.

PART VII.—Rights and powers of tenant for life, and protection of settled estate during his life.

Right of tenant for life to profits of settled estate.

27. All profits of a settled estate, which are realised by a tenant for life, or which, immediately before his death, were due to him but were not realised by him, shall, subject to the other provisions of this Act, belong absolutely to such tenant or his heirs, executors, administrators or assigns;

(The Bengal Settled Estates Act, 1904.—Part VII.—Rights and powers of tenant for life, and protection of settled estate during his life.—Sections 28-30.)

Provided that, if any rents due to a tenant for life in respect of a settled estate were in arrear immediately before his death, the same shall, upon his death, notwithstanding anything contained in this Act, or in the Indian Succession Act, 1865, or in any other law, or in any settlement made under this Act, and notwithstanding any will or other disposition made by such tenant, become due to the next holder of the estate.

X of 1903.

Restriction on alienation by tenant for life.

28. Except as provided in sections 29 and 30, a tenant for life of a settled estate shall not be entitled to transfer by way of sale or gift, or otherwise alienate, or to create any incumbrance upon, or to lease, the estate, or any part thereof, or to assign his right to receive any of the profits thereof.

Sales by tenant for life.

29. (1) A tenant for life of a settled estate may, with the previous written sanction of the Civil Court, sell the estate or any part thereof.

(2) If the estate belonged, immediately before the execution of the settlement, to a joint Hindu family or to co-sharers, the Court shall, before determining to accord such sanction, notify the proposed sale to all persons (except the tenant for life) who, but for the settlement, would be co-owners or co-sharers in the estate; and shall hear and duly consider any objection which may be advanced by them or on their behalf.

(3) The proceeds of every such sale shall be paid by the purchaser to the Collector; and shall be held by the Collector in trust to re-invest the same, with the approval of the Local Government, in immoveable property, which shall, upon such re-investment, be and remain subject to the settlement in like manner as if it had been originally comprised therein.

Leases by tenant for life.

30. (1) A tenant for life of a settled estate may lease the estate or any part thereof from year to year or for any term not exceeding seven years, or (with the previous written consent of the Collector) for any longer term not exceeding fourteen years, or (with the previous sanction of the Local Government) for any longer term of years or in perpetuity.

(2) No premium or fine shall be taken on any such lease granted for a term exceeding seven years, or in perpetuity, except with the previous written consent of the Collector.

(3) When any premium or fine is taken on any lease granted under sub-section (1), then—

(a) if the lease is from year to year or for a term of years, a sum equivalent to four-fifths of the amount of the premium or fine, or

(b) if the lease is in perpetuity, the whole of the premium or fine

shall be paid—

(i) to the trustee appointed for the purposes of section 12, sub-section (3), or

(ii) if no trustee has been so appointed, to a trustee to be appointed for the purpose;

and shall be held by such trustee as part of the settled estate, and shall be invested by him in securities authorized by section 20 of the Indian Trusts Act, 1882:

II of 1882.

Provided that such trustee may retain, for the payment of his expenses and remuneration, such portion of the amount paid to him as may be authorised by rules made under section 37, clause (c).

(4) In respect of every such lease the best rent shall be reserved that can reasonably be obtained.

(5) No payment of any instalment of such rent made to a tenant for life before it falls due shall operate to the prejudice of any subsequent holder of the estate.

(The Bengal Settled Estates Act, 1904.—Part VII.—Rights and powers of tenant for life, and protection of settled estate during his life.—Sections 31-34.)

Saving of leases of raiyati holdings.

31. Nothing in section 28 or sub-sections (1) and (2) of section 30 shall apply to leases of raiyati holdings.

Bar to sale of settled estate in execution of decree.

32. (1) No settled estate or part thereof shall during the life of a tenant for life, be sold in execution of a decree of a Civil Court.

(2) If any decree against a tenant for life of a settled estate is not satisfied, the Court may, on the application of the decree-holder, appoint a Receiver of such estate or any part thereof, under the provisions of Chapter XXXVI of the Code of Civil Procedure, for the purpose of recovering the amount of the decree and, subject to the rights of any secured creditor over such estate or part, satisfying the claims of the decree-holder.

XIV of 1852.

(3) An appeal shall lie to the High Court from any order made by a Court under sub-section (2).

Sale of settled estate for arrears of land-revenue, &c.

33. (1) Notwithstanding anything contained in the Bengal Land-revenue Sales Act, 1859, or any other law, no settled estate or part of a settled estate shall, without the previous sanction of the Local Government, be sold, during the life of any tenant for life thereof, for an arrear of land-revenue or for any other arrear which is recoverable in the same manner as an arrear of land-revenue.

XI of 1859.

(2) If any settled estate or part of a settled estate be sold, with the sanction required by sub-section (1) of this section, to any person other than the tenant for life, the resulting surplus shall be dealt with in the manner described in sub-section (3) of section 29;

and, if the estate or any part thereof be purchased at the sale by the tenant for life, the resulting surplus shall be paid to the tenant for life, and the estate or part so purchased shall, notwithstanding the sale, continue to be subject to the settlement.

(3) If the person whose name is entered in any certificate granted under the said Bengal Land-revenue Sales Act, 1859, or any other law, as purchaser of a settled estate or part thereof, is not the tenant for life, the said resulting surplus may be retained by such person, and shall not be payable to the tenant for life, even though it may be claimed that the purchase was made by such person on behalf of the tenant for life.

XI of 1859.

Procedure for recovery of such arrears.

34. (1) If any such arrear accrues in respect of a settled estate, or any part thereof, during the life of any tenant for life thereof, and if the sale of the estate or part for the recovery of the arrear is not sanctioned by the Local Government under section 33, the Collector may attach the estate or part,

and shall thereupon be entitled, to the exclusion of all other persons, to receive all rents and other moneys (if any) due to such tenant in respect of such estate or part,

and may manage the estate or part, either directly or through a manager, for such period as may be necessary for the recovery of such arrear.

(2) Upon the expiration of the period referred to in sub-section (1), the Collector shall deduct from the proceeds of the management the amount of the said arrear and of any similar arrears that may have accrued during such period, and any interest due thereon, and the expenses incurred in the management; and shall then—

(a) pay the balance of such proceeds to the person then entitled to hold the estate, and

(b) furnish such person with an account of the receipts and expenditure during the management, and

(c) release the estate or part to such person.

(The Bengal Settled Estates Act, 1904.—Part VIII.—Miscellaneous.—Sections 35-39.)

(3) If, after a settled estate or part thereof held by a tenant for life has been managed and released by the Collector under sub-sections (1) and (2), any such arrear as aforesaid again accrues in respect of the estate or part during the life of the same tenant, and if the sale of the estate or part thereof for the recovery of the arrear is not sanctioned by the Local Government under section 33,

the Court of Wards may take charge of and deal with the estate or part under the provisions of the Court of Wards Act, 1879; and may retain such charge until the death of such tenant and, if the next holder is then a minor, until such minor attains his majority;

and the said tenant shall, while the Court of Wards has charge of the estate or part, be debarred from receiving any income from the estate or part, other than such monthly sum as the Court of Wards may allow for the support of himself and his family;

and the powers conferred by sections 29 and 30 of this Act shall, while the Court of Wards has charge of the estate or part, be exerciseable by the Court of Wards and not by the said tenant.

PART VIII.—Miscellaneous.

Form, publication and duration of permissions granted by Local Government.

35. (1) Every permission granted by the Local Government under section 8, section 10, sub-section (3), section 12, sub-section (4), section 13, section 16 or section 24 shall be in writing signed by one of the Secretaries to the Local Government, and shall contain a description of the property or person in respect of which the permission is granted, sufficient to identify the same.

(2) Every permission granted by the Local Government under section 8, section 13, section 16 or section 24 shall be published by notification, and shall remain in force until the expiry of twelve months from the date of the notification, or until the death of the applicant, whichever first happens.

Notifications how to be published.

36. Every notification prescribed by this Act shall be published in the Calcutta Gazette and also in such Vernacular Gazettes (if any) as the Local Government may direct.

Power to make rules.

37. (1) The Local Government may, after previous publication, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provision, the Local Government may make rules for all or any of the following matters, namely:—

- (a) the procedure to be followed in submitting an application to the Local Government under this Act;
- (b) the form and contents of such applications, and the documents (if any) which should accompany them;
- (c) the payment to trustees, out of the trust property, of expenses properly incurred in or about the execution of any trust created under this Act, and of remuneration for their trouble, skill and loss of time in executing any such trust;
- (d) the guidance of the Collector in managing estates attached under section 34;
- (e) the payment or recovery of any expenses incurred by the Government in connection with any proceedings taken under this Act.

Application of Court of Wards Act, 1879.

38. The provisions of the Court of Wards Act, 1879, so far as they are not inconsistent with the terms of settlements duly made under this Act, shall be applicable to settled estates.

Saving of rights of secured creditors.

39. Nothing in this Act shall affect the rights of any secured creditor—

- (a) if his incumbrances or any of them have not been set forth in the list prescribed by section 4, clause (c), or
- (b) if he has not assented to any condition inserted in a settlement made under this Act for the discharge or continuance of his incumbrances or any of them.



The Calcutta Gazette.

WEDNESDAY, FEBRUARY 3, 1904.

PART IV.

Bills of the Bengal Council.

GOVERNMENT OF BENGAL. LEGISLATIVE DEPARTMENT.

THE following Report of the Select Committee on the Bengal Settled Estates Bill, together with the Bill as amended by the Committee, is, by order of the President, published for information:—

THE BENGAL SETTLED ESTATES BILL, 1904.

REPORT OF THE SELECT COMMITTEE.

WE, the undersigned, Members of the Select Committee to which the

Letters Nos. 1227 to 1235, dated the 21st July, 1903, asking for opinions on the Bill.

Letters Nos. 1497 to 1501, dated the 4th August, 1903, forwarding an extract from a letter from the Government of India, relating to the provisions in the Bill for the levy of stamp duty.

Letter No. 2078, dated the 3rd August, 1903, from the Honorary Secretary to the Central National Muhammadan Association.

Letter, dated the 4th August, 1903, from the Honorary Secretary to the Bhagalpur Landholders' Association.

Letter from the Honorary Secretary to the Muhammadan Literary Society of Calcutta, No. 829, dated the 4th August, 1903, with annexure. [Paper No. 2.]

Telegrams, dated the 4th and 6th August, 1903, from the Honorary Secretary, Bihar Landholders' Association.

Letter No. 1536P., dated the 6th August, 1903, from the Political Department.

Letter No. 312, dated the 6th August, 1903, from the Honorary Secretary to the British Indian Association. [Paper No. 4.]

Letter, dated the 6th August, 1903, from the Secretary to the Calcutta Trades Association. [Paper No. 5.]

Letter, dated the 7th August, 1903, from the Hon'ble Nawab Bahadur Khwaja Salimullah, of Dacca. [Paper No. 6.]

Letter, dated the 8th August, 1903, from the Vice-Chairman, District Board, Patna. [Paper No. 7.]

Letter No. 6135A., dated the 7th August, 1903, from the Officiating Secretary to the Board of Revenue, L. P.

Letter No. 2388G., dated the 3rd August, 1903, from the Collector of the 24 Parganas.

Letter No. 66R.G., dated the 1st August, 1903, from the Officiating Commissioner of the Presidency Division.

Letter No. 1513R., dated the 3rd August, 1903, from the Commissioner of the Orissa Division.

Letter, dated the 8th August, 1903, from the Honorary Secretary to the Bengal Landholders' Association. [Paper No. 9.]

Letter, dated the 10th August, 1903, from the Honorary Secretary, Bihar Landholders' Association.

Letter, No. 1:3G.—P.52, dated the 12th August, 1903, from the Secretary, Muhammadan Defence Association.

Letter, dated the 13th August, 1903, from the Honorary Secretary, Bengal Landholders' Association.

Letter, dated the 13th August, 1903, from the Vice-Chairman of the Patna District Board, with enclosure.

Letter No. 1555—1903, dated the 13th November, 1903, from the Secretary to the Bengal Chamber of Commerce. [Paper No. 11.]

Bengal Settled Estates Bill, 1903, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this, our Report, with the Bill, as amended by us, annexed hereto.

2. The amendments which we have made in the Bill are, as far as possible, printed in italics; and all amendments of any importance are explained in the following paragraphs.

3. *Preamble.*—We have inserted the words "by landholders" in the preamble, so as to make it quite clear at the outset that the Bill is not an Incumbered Estates Bill, but may be put into operation only upon the voluntary action of landholders themselves.

4. *Clause 2.*—We have inserted words in sub-clause (h) to make it clear that the word

"son," as used in the Bill, includes a son born after the date of a settlement.

5. Additions have also been made to sub-clause (h) in order to recognise adoptions made (i) after the execution of a settlement, by the adoptive father himself, or (ii) within five years after his death, by his widow, if acting under authority lawfully conferred by him. The word "lawfully" has been inserted in sub-clause (ii) in order to exclude adoptions made by a widow in contravention of the *Mithila* law.

6. We have inserted definitions of "secured debt," "unsecured debt," "secured creditor" and "unsecured creditor," with reference to the new clauses for the protection of creditors which are explained below. We think some line must be drawn to exclude petty debts from the operation of the clauses just referred to, and have accordingly limited the new definition of "unsecured debt" to debts, demands and claims for sums exceeding Rs. 500.

7. We have altered the definition of the word "incumbrance," with reference to the new definitions mentioned in paragraph 6, *ante*.

8. *Clause 3*.—We have inserted provisos to meet (1) cases in which, as under the Mitakshara law, an estate is owned by the family, and not by an individual, the principal member of the family having, beyond his share in the proprietorship, nothing but a right of management as *karta*; and (2) cases in which, as under the Muhammadan law, a landholder has only a share in an estate, coupled with a right of management over the estate. We consider it desirable that the Bill should extend to both Mitakshara families and Muhammadan families as well as to other classes of people, and the amendments which we have made will adapt clause 3 to such families.

9. *Clause 4* is new. It definitely prescribes the signing and verification of applications for permission to settle an estate under the Bill, and states what particulars such applications are to contain, instead of leaving these matters to be dealt with, as was proposed by clause 26 of the Bill as introduced in Council, by rules to be made by the Local Government.

10. Although the Bill contains no clause to confine its application to estates of a particular value, we have inserted a sub-clause, (b), to require the furnishing of particulars as to value, in order that the Local Government may have a ready means of estimating the suitability of an estate for settlement.

11. Sub-clause (c) is important. It prescribes the inclusion, in all applications, of a full list of all incumbrances enforceable against the applicant or against the estate which it is proposed to settle. By virtue of the restriction inserted in the new definition of "unsecured debt," this sub-clause will not apply to debts due to unsecured creditors, not exceeding Rs. 500 in the case of each such creditor. All secured debts, however, must, as the Bill now stands, be mentioned in applications, whatever may be their amount.

12. *Clause 5* is also new. It requires an applicant who proposes to settle an estate belonging to a joint Hindu family, or to co-sharers, to send with his application a declaration by himself as to his powers, and a declaration by his co-owners or co-sharers, as the case may be, that they are willing to assent to the proposed settlement. Provision is made, in sub-clauses (2) and (3), for the latter declaration being made by guardians or committees, where any co-owners or co-sharers are minors or lunatics.

If the assent of any co-owner or co-sharer should not be obtainable, then the proposed settlement would have to be abandoned, or might, in the case of an estate held by co-sharers, be restricted to the shares of such co-sharers as are willing to assent to it.

13. *Clause 7*.—We have amended this clause so as—

(1) to require the Local Government to send a copy of every application, when in order, to each creditor and to each co-owner or co-sharer who has declared himself willing to assent to the settlement of the estate, and

(2) to declare that the notification in the Gazette must set forth the application and its accompanying declarations, instead of merely stating the purport of the application.

14. *Clause 8*.—Sub-clause (ii) has been amended so as to require, in every case in which incumbrances are not discharged prior to making a settlement,—

(1) that a condition be made for the insertion in the settlement of provisions either for the discharge of the incumbrances or for their continuance, with or without modification, and the payment of interest in either case; and

- (2) that such provisions shall be subject to the assent of the creditors as well as the approval of the Local Government.

The Bill, as observed in paragraph 3 *ante*, is not an Incumbered Estates Bill; and the amendments just mentioned are designed in order to prevent its being applied to any estate which is insolvent or heavily indebted, while they will also meet objections taken by the Bengal Chamber of Commerce and the Calcutta Trades Association, with which we are in unison, as to the insufficiency of the Bill, as introduced in Council, to protect the interests of creditors.

The provision as to the continuance of incumbrances will meet such cases as that of the Bettiah loan.

15. Sub-clause (2) of clause 8 empowers the Local Government to refer to a Civil Court disputes as to the right of the applicant to make a settlement; and sub-clause (3) declares that the decision of the Court on any such reference shall be deemed to be a decree, and shall be appealable to the High Court.

16. *Clause 9* is new. It declares explicitly that the rejection of an application shall be no bar to the making of a fresh application if the applicant shows sufficient reason for so doing.

17. *Clause 10 (1)*.—*Meaning of the expression "three generations."*—The object of the Bill, as explained by the Hon'ble Member in charge when introducing it in Council, is to provide a procedure for the settlement of estates for three generations. Some doubt has been felt as to the precise meaning which should be attached to the expression "settlement for three generations."

18. The Bill, as introduced in Council, was drawn on the assumption that A, the settlor (the first tenant for life), A's son B (the second tenant for life) and A's grandson C (the ultimate holder) constitute the three generations who are to be benefited by a settlement made under the Bill.

19. On the other hand, it has been contended that the expression in question should be interpreted as meaning that there should be three tenants for life, namely A, the settlor (the first tenant for life), A's son B (the second tenant for life), and A's grandson C (the third tenant for life); the ultimate holder being A's great-grandson, D.

20. It has been urged that, if there are to be only two tenants for life (including the settlor), the settlor will derive but little benefit from the Bill, inasmuch as under the existing law he can already limit his own interest to a life tenancy, and, if he is subject to the *Dayabhaga* law, he can also limit the interest of his son (if in being at the time of making the settlement) to a life tenancy; so that all that he would gain by the Bill would be a power to limit to a life tenancy the interest of an unborn son, and a power to grant the estate in remainder to an unborn grandson.

21. Again, it has been urged that, in order suitably to give effect to the policy of settling an estate for three generations, each of these three generations should be mere tenants for life, the ultimate vesting of the estate being postponed to the fourth generation.

22. We are of opinion that the settlor should be excluded in determining the "three generations" who are to be benefited by the Bill, and that accordingly there should be two tenants for life between him and the ultimate holder; and we have revised clauses 2, 10 (1), 11 and 12 (2) so as to give effect to this recommendation.

23. *Clause 10 (2)*.—Sub-clause (2) of clause 10 is almost entirely new. It confines the declaration as to the ultimate absolute ownership of an estate to the case of estates to which the settlor was, immediately before the execution of the settlement, solely entitled; and it introduces two clauses to declare that, where the estate belonged to a joint Hindu family, the ultimate holder shall merely be the *karta* or manager of the estate, and that, where the estate belonged to co-sharers, the ultimate holder shall merely have the sole right of management over the estate.

The Bill, as now settled, will therefore provide for the restoration of the rights of co-owners and co-sharers, or their descendants, upon the expiration of a settlement.

24. We have, however, added words to clause 10 (2) in order to require the insertion, in deeds of settlement, of an express provision to the effect that the gift to the remainderman is subject to the terms of any fresh settlement

made by a tenant for life. Ordinarily the person who would execute a fresh settlement would be the second or third tenant for life, and the main object of a fresh settlement would be to convert the remainderman of the preceding settlement into a life tenant, so as to carry on the settlement for one more generation; and, if an express saving of the right to make such a conversion be inserted in the deed itself, there will be the less reason for objections on the part of the remainderman to the limitation of his interest.

25. *Clause 10 (3).*—We have amplified this clause so as to make it applicable to cases in which the eldest or only son of the settlor has predeceased him, as well as to cases in which the eldest or only son is a person of proved incapacity or defect of character.

26. We have also inserted words in clause 10 (3) in order to provide in these cases that the second tenant for life may be the son of the deceased or excluded son (as an alternative to another son of the settlor) and that the third tenant for life may be either the son of the second tenant for life or the son of the deceased or excluded son.

27. *Clause 11.*—We have revised this clause so as to declare expressly that a deed of settlement may provide for an estate being vested, on failure of previous tenants, only in some person who is descended from the settlor or the settlor's father in the direct main line.

28. *Clause 12 (2).*—We have revised sub-clause (b) so as to require the insertion in settlements of provisions for the maintenance of (1) co-owners and co-sharers (if any) who have assented to the settlement of their shares, and (2) all persons who, at the time of the execution of the settlement, are, or thereafter may be, legally entitled to maintenance out of the estate.

29. We have made an addition to sub-clauses (c), (d) and (e) to require the insertion in settlements of provisions for the management of the estate after the death of a tenant for life and pending the adoption of a son under authority lawfully conferred by him.

30. *Clause 12 (3).*—We have made an addition to authorise the payment of expenses and remuneration to trustees.

31. *Clause 12 (4).*—We have inserted words to make it clear that the Local Government may permit the insertion in a settlement of any provisions desired by the settlor; and we have added a proviso to declare that no provisions inserted in pursuance of this sub-clause shall operate to the prejudice of any creditor unless assented to by him.

32. *Clause 13.*—The proviso is new. The object of sub-clauses (ii) and (iii) is to authorise the making of supplementary settlements in respect of property belonging to co-owners or co-sharers; and they will admit of the addition of any such property which may have been excluded from a settlement in the first instance by reason of the minority of some of the co-owners or co-sharers.

Sub-clause (3) has been amplified so as to bring into full operation, in respect of supplementary settlements of property, the preceding clauses of the Bill relating to first settlements.

33. *Clause 14.*—This clause is new. It gives to settlors power to apply for permission to make a supplementary settlement for the purpose of substituting new second and third tenants for life for those appointed by a former settlement, in cases in which the second tenant for life appointed by such former settlement dies or shows incapacity or defect of character after its execution.

34. *Clause 16.*—This clause is almost entirely new. It declares, on the lines of preceding clauses, the procedure to be followed in dealing with applications for permission to make (1) supplementary settlements in respect of persons, and (2) fresh settlements.

35. *Clause 17.*—Sub-clause (1) and part of sub-clause (5) repeat provisions of the Bill as introduced, but sub-clauses (2) to (4) are new.

Sub-clause (2) declares that all property included in prior settlements must be included in any fresh settlement that may be made. The object of the sub-clause is to prevent the diminution of creditors' security by the making of a fresh settlement. If it should be desired, for any reason, to exclude any property, that can be done under clause 24 (b), before the fresh settlement is made, in which case the rights of creditors will be secured by clause 25.

Sub-clause (3) declares that no property shall be included in a fresh settlement unless it has been included in a former settlement. The object of this clause is to prevent the addition to settled estates by means of a fresh settlement of property which may be encumbered. As the procedure to be followed in dealing with applications for permission to make fresh settlements does not include the making of any inquiry as to incumbrances, it is necessary to exclude fresh property from such settlements. If a tenant for life should wish to add such property, he should do so by means of a supplementary settlement, which can, as the Bill is drawn, only be authorized after full inquiry as to incumbrances has been made.

Sub-clause (4) declares, by way of further security, that if any incumbrance dealt with in a former settlement is still in existence when a fresh settlement is made, the fresh settlement shall not affect the rights of the creditor unless he assents to it.

36. *Clause 18.*—We have inserted a sub-clause providing that in the case of fresh settlements and supplementary settlements in respect of persons the stamp duty shall be a nominal sum of ten rupees.

37. *Clause 19.*—In view of the special stamp duty on settlements which it is proposed to require by clause 18 of the Bill, it is, we think, desirable to prevent all possibility of succession duties being charged on property, debts or securities covered by a settlement. We have accordingly declared in clause 19 that probate, letters of administration or a succession certificate need not be taken out in respect of such property, debts or securities; and we have added a sub-clause to declare that if any probate, any letters of administration or any succession certificate should purport to cover any such property, debts or securities, no court-fee shall be levied in respect thereof.

38. *Clause 20.*—In order to prevent difficulties arising from the absence of probate, letters of administration or a certificate granted under the Succession Certificate Act, 1889, we have empowered the Local Government to grant a special certificate to the next holder under a settlement, after the death of any tenant for life.

39. *Clause 21.*—Sub-clause (2) is new. It requires the local publication of information as to the purport of instruments of settlement.

40. *Clause 22.*—We have added at the end of this clause the words “which is inconsistent with the provisions of this Act,” in order to make it clear that the laws and customs referred to in sub-clauses (a), (b) and (c) are not intended to be abrogated in so far as they are consistent with the provisions of the Bill.

41. *Clause 23.*—We have added sub-clauses to require that an instrument revoking a settlement be executed, stamped and registered in the same way as an instrument creating a settlement.

42. *Clause 25* is new. It declares expressly that incumbrances shall revive upon the revocation, cancellation or amendment of a settlement.

43. *Clause 26* is new. Its object is to prevent disputes by declaring that rents of a settled estate, which were in arrear immediately before the death of a tenant for life, shall belong to the next holder of the estate, and not to the heirs, executors, administrators or assigns of such tenant.

44. *Clause 27.*—We have struck out the words “for any greater interest or time than during his life,” which appeared at the end of the corresponding clause (17) of the Bill as introduced in Council. We consider that tenants for life should be debarred from alienating any part of a settled estate or the profits thereof for any period, except, of course, in the cases provided for in clauses 28 and 29 of the Bill; for if alienations were allowed the objects of the Bill would be defeated.

45. *Clause 28.*—We have transferred from the Local Government to the Civil Court the power to sanction a sale of a settled estate or part thereof by a

tenant for life. Such a power can, in our opinion, be best exercised by a judicial tribunal. We have provided for notice of a proposed sale being given to all persons who, but for the settlement, would have been co-owners or co-sharers, and for their objections (if any) being heard and duly considered before the Court determines to sanction a sale.

46. *Clause 29.*—We have excepted leases up to seven years and leases in perpetuity from sub-clause (2), so as to admit of a premium or fine being taken on them without the consent of the Collector.

47. We have altered sub-clause (3) so as to allow the tenant for life to keep to his own use one-fifth of any premium or fine that he may stipulate to be taken on a lease from year to year or for a term of years, and we have added a proviso to authorise the payment of expenses incurred by, and remuneration to, the trustee.

48. We have struck out, as being unnecessary, the provision in sub-clause (4) which required that rent due under a lease of a settled estate should be payable quarterly.

49. *Clause 30.*—We have limited the range of this clause so as (1) to confine the exemption to leases of raiyati holdings and (2) to secure the application in all cases of sub-clause (3) of clause 29, as to the investment of a premium or fine taken on a lease.

50. *Clause 31.*—This clause is new. It prohibits the sale of a settled estate or any part thereof, during the life of a tenant for life, in execution of a decree; but provides for the appointment of a Receiver to recover the sum decreed. We consider the clause to be desirable in order to restrain, so far as is practicable, the wasting of an estate by a tenant for life. It leaves untouched the right of a landholder to bring a patni tenure to sale under the Bengal Patni Taluks Regulation, 1819.

51. *Clause 32.*—We have inserted words in sub-clause (2) to secure that, when an estate is sold to the tenant for life, the resulting surplus should be paid to him. In such a case it would be unfair that the surplus should be invested in immoveable property, to be added to the settlement, in addition to requiring that the property which the tenant has purchased should remain subject to the settlement.

52. *Sub-clause (3)* is new. Its object is to prevent *benami* purchases by a tenant for life.

53. *Clause 33.*—We have altered this clause so as to make it clear that, when arrears of revenue accrue in respect of part only of a settled estate, that part only may be attached by the Collector or dealt with by the Court of Wards.

54. We have altered sub-clause (3) so as to authorise, instead of to compel, the Court of Wards to retain charge of an estate until the death of the tenant for life and the attainment of majority by the next holder.

55. *Clause 36.*—We have added a sub-clause authorizing the Local Government to make rules as to the payment to trustees, out of trust money, of expenses properly incurred by them and remuneration for their services.

56. *Clause 37* is new. It declares that the provisions of the Court of Wards Act, 1879, so far as they are not inconsistent with the terms of settlements duly made under the Bill, shall be applicable to settled estates. The object of the clause is to make it clear that the Court of Wards may take charge of a settled estate if, for example, the holder of the estate has been adjudged by a Civil Court to be of unsound mind and incapable of managing his affairs and the settlement contains nothing to oust the jurisdiction of the Court of Wards.

57. *Clause 38* is also new. It saves the rights of secured creditors whose claims have not been set forth by an applicant for settlement, or who

may not have assented to conditions inserted in an instrument of settlement for the continuance or discharge of their incumbrances.

58. We recommend that the Bill, as now amended, be passed.

C. E. BUCKLAND.
L. HARE.
B. L. GUPTA.
J. T. WOODROFFE.
TARINI PERSHAD.
K. SALIMULLAH.
ASUTOSH MUKHOPADHYAYA.

CALCUTTA;
The 23rd January, 1904.

THE BENGAL SETTLED ESTATES BILL, 1904

AS AMENDED BY THE SELECT COMMITTEE.

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THE BENGAL SETTLED ESTATES BILL, 1904,

[AS AMENDED BY THE SELECT COMMITTEE].

[NOTE.—The amendments made by the Select Committee are, as far as possible, printed in italics.]

A
BILL

TO

FACILITATE THE FAMILY SETTLEMENT OF ESTATES IN BENGAL.

WHEREAS it is expedient to facilitate the making of family settlements of estates *by landholders* in Bengal;

And whereas, the Bengal Land Revenue Sales Act, 1859, *the Indian Succession Act, 1865, the Court-fees Act, 1870, the Indian Limitation Act, 1877, the Probate and Administration Act, 1881, the Transfer of Property Act, 1882, the Succession Certificate Act, 1889, and the Indian Stamp Act, 1899*, having been passed by the Governor General of India in Council, the previous sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act;

XI of 1859.
X of 1865.
VII of 1870.
XV of 1877.
V of 1881.
IV of 1882.
VII of 1889.
II of 1899.

55 & 56 Vict.,
c. 14.

It is hereby enacted as follows:—

PART I.—Preliminary.

Short title and extent.

1. (1) This Act may be called The Bengal Settled Estates Act, 1904, and

(2) It extends to the whole of Bengal.

Definitions.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) “estate” includes—

- (i) immoveable property,
- (ii) money and securities for money, and
- (iii) any jewellery or other moveable property which should, in the opinion of the Local Government, be treated as heirlooms;

(b) “settled estate” means an estate in respect of which a settlement made under this Act is for the time being in force; [Cf. U. P. Act II of 1900, s. 2.]

(c) “settlor” means the person who makes a settlement under this Act;

(d) “first tenant for life” means the settlor;

(e) “second tenant for life” means the person appointed by a settlement made under this Act to take a settled estate on the death of the first tenant for life;

(f) “third tenant for life” means the person appointed by a settlement made under this Act to take a settled estate on the death of the second tenant for life;

(g) “tenant for life” means a first, second or third tenant for life;

(h) “son” includes a son born after the execution of a settlement, and, in the case of anyone whose personal law permits adoption, includes also a son— [Cf. Ben. Act I of 1899, s. 3, cl. (42).]

(i) duly adopted, either before or after the execution of a settlement, by the adoptive father himself, or

(ii) duly adopted to her deceased husband, within five years after his death, by a widow, acting under authority, in writing and registered, lawfully conferred on her by him in that behalf;

(The Bengal Settled Estates Bill.—Part II.—Application for permission to make a first settlement of an estate.—Clauses 3, 4.)

- (j) "secured debt" means a debt, demand or claim which is secured by way of a mortgage, charge or lien on specified property and is primarily enforceable against such property;
- (k) "unsecured debt" means a debt, demand or claim (other than a secured debt) for any sum exceeding five hundred rupees, which is enforceable against the person or general property of the debtor;
- (l) "secured creditor" means a person who is entitled to enforce payment of a secured debt;
- (m) "unsecured creditor" means a person who is entitled to enforce payment of an unsecured debt;
- (n) "incumbrance" means a secured debt, or an unsecured debt, or both;
- (o) the expression "the Collector," when used with reference to any estate, means the Collector of the district in which the estate or any part thereof is situated; and
- (p) the expression "the Civil Court," when used with reference to any estate, means the principal Civil Court having original jurisdiction in the area in which the estate or any part thereof is situated.

(2) A person shall be deemed, for the purposes of this Act, to be "competent to contract" if he is of the age of majority according to the law to which he is subject, and is of sound mind and is not disqualified from contracting by any law to which he is subject. [Cf. Act IX of 1872, s. 11; U. P. Act II of 1900, s. 2.]

(3) All words and expressions used in this Act, which are defined in the Transfer of Property Act, 1882, shall have the same meaning as in that Act. IV of 1882.

Part II.—Application for permission to make a first settlement of an estate.

Who may apply for permission to settle an estate.

3. (1) Any landholder may apply to the Local Government for permission to make a settlement of an estate under this Act, — [Cf. U. P. Act II of 1900, s. 2.]

- (a) if he is competent to contract,
- (b) if he is in possession of the estate, either in his own right or along with or on behalf of others, and
- (c) if the estate is held in permanent, heritable and transferable right.

(2) Provided that no application may be made under sub-section (1) in respect of any estate—

- (i) unless the applicant is solely entitled to the estate, or
- (ii) if the estate belongs to a joint Hindu family—unless the applicant is the karta or managing member of the family, or
- (iii) if the estate belongs to co-sharers—unless the applicant is a principal shareholder in the estate and has, by custom or with the consent of his co-sharers, the sole right of management over the estate.

Signature, verification and contents of application.

4. (1) Every such application must be in writing, and must be signed by the applicant and verified by him in the manner prescribed in section 52 of the Code of Civil Procedure for the verification of plaints. XIV of 1882.

(2) Every such application must contain the following particulars, namely:—

- (a) a description of the estate, sufficient for its identification;
- (b) a statement of the income yielded annually by the property comprised in the estate, and the revenue, rates and taxes due to the Government or any Local Authority annually in respect of such property; and
- (c) a list giving a full and complete enumeration and description of all incumbrances held by secured and unsecured creditors, respectively, and enforceable against the applicant or the estate, with the name and address of each such creditor, and a correct statement of the amount due to each such creditor.

(The Bengal Settled Estates Bill.—Part II.—Application for permission to make a first settlement of an estate.—Clauses 5-7.)

Declarations to accompany applications in the case of estates belonging to a joint Hindu family or to co-sharers.

5. (1) If any estate in respect of which an application is made under section 3 belongs to—

- (a) a joint Hindu family, or
- (b) co-sharers,

the application must be accompanied by—

- (i) a sworn declaration by the applicant,—

in case (a), that he is the karta or managing member of the family, or

in case (b), that he is a principal shareholder in the estate and has, by custom or with the consent of his co-sharers, as the case may be, the sole right of management over the estate; and

- (ii) a sworn declaration, in case (a), by the other co-owners, or in case (b) by the other co-sharers, that they are willing to assent to the estate being settled under this Act.

(2) If any of the said other co-owners or co-sharers is, at the time when the application is made, a minor, a declaration under clause (ii) of sub-section (1) may be accepted if it is

made on behalf of such minor by the guardian of his property or (when a guardian of his property cannot lawfully be appointed) the guardian of his person, appointed or declared under the Guardians and Wards Act, 1890, or any other law for the time being in force, and

VIII of 1890.

approved by an order in writing under the seal of the Court which appointed or declared the guardian.

(3) If any of the aforesaid other co-owners or co-sharers is, at the time when the application is made, a lunatic, a declaration may be accepted under clause (ii) of sub-section (1) if it is

made on behalf of such lunatic by his committee appointed under the Lunacy (Supreme Courts) Act, 1858, or the Lunacy (District Courts) Act, 1858, or any other law for the time being in force, and

XXXIV of 1858.
XXXV of 1858.

approved by an order in writing under the seal of the Court which appointed the committee.

Power to reject application.

6. The Local Government may, in its discretion, and after such inquiry (if any) as it may think fit to make, by written order reject any application made under section 3.

[Cy. U. P. Act II of 1900, s. 4.]

Transmission and notification of application.

7. If any application made under section 3 is not rejected under section 6, and if the Local Government is satisfied that the conditions specified in section 3 are fulfilled, and that the provisions of sections 4 and 5 have been duly complied with,

[Cy. U. P. Act II of 1900, s. 5.]

the Local Government shall send a copy of the application, and of the declarations which accompanied it, to each creditor who is named in the application, and to each person who has made a declaration in pursuance of clause (ii) of section 5;

and, with the previous sanction of the Governor General in Council, shall publish a notification—

- (a) setting forth the application and the declarations which accompanied it;
- (b) calling upon all creditors, whether secured or unsecured, holding or entitled to incumbrances enforceable against the applicant or the estate to which the application relates, and all other persons interested or claiming to be interested in the estate, to send to

(The Bengal Settled Estates Bill.—Part II.—Application for permission to make a first settlement of an estate.—Part III.—Provisions to be contained in first settlements.—Clauses 8-10.)

the Local Government written notice of their incumbrances and interests, respectively, within a period of six months from the date of the notification, and

- (e) intimating that any objections to the proposed settlement, whether urged by creditors or by other persons interested in the estate, which may be communicated to the Local Government in writing within the said period, will be duly considered.

Rejection or approval of application after notification.

8. (1) At any time after the expiration of the said period, and after considering any notices and objections received under section 7, and after such inquiry (if any) as it may think fit to make, the Local Government may, in its discretion, by written order, either—

[Cf. U. P. Act II of 1900, s. 6.]

- (a) reject such application, or
(b) grant permission to make the proposed settlement, in respect either of the whole of the property to which the application relates or of any part thereof:

Provided that, if any incumbrances have been set forth in the application or brought to the notice of the Local Government, such permission shall not be granted unless—

- (i) the incumbrances are first discharged, or
(ii) a condition is made for the insertion in the settlement of provisions, to be assented to by the creditors and approved by the Local Government, for the discharge of the incumbrances, or for their continuance, with or without modification, and for the payment of interest thereon.

(2) If the right of the applicant to make the settlement is disputed by, or on behalf of, any person interested or claiming to be interested in the estate, the Local Government may, if it thinks fit, refer the matter in dispute to the Civil Court for decision, before determining whether to reject the application or to grant permission to make the proposed settlement.

[Cf. Ben. Act VII of 1876, s. 55.]

(3) Every decision by the Civil Court under sub-section (2) shall be deemed to be a decree within the meaning of the Code of Civil Procedure; and an appeal therefrom shall lie to the High Court.

XIV of 1883.

Rejection no bar to making fresh application.

9. The rejection under section 6 or section 8 of an application for permission to make a settlement of an estate under the foregoing provisions of this Act shall be no bar to the making of a fresh application in respect of the same estate, if the applicant shows sufficient reason for so doing.

PART III.—Provisions to be contained in first settlements.

Settlement of estates for three generations.

10. (1) Every settlement made under the foregoing provisions of this Act in respect of any estate shall provide that the estate shall be held for life—

- (a) by the settlor, as first tenant for life,
(b) and thereafter, by the second tenant for life, who shall be the eldest or only son of the first tenant for life,
(c) and thereafter, by the third tenant for life, who shall be the eldest or only son of the second tenant for life.

(2) Every such settlement shall further provide,—

- (i) if the estate is one to which the settlor was, immediately before the execution of the settlement, solely entitled—that, after the life of the third tenant for life, the eldest or only son of such tenant shall hold the estate absolutely;
(ii) if the estate belonged, immediately before the execution of the settlement, to a joint Hindu family—that, after the life of the third tenant for life, the eldest or only son of such tenant shall during his life be the karta or manager of the estate, but without prejudice to the rights of any persons who, but for the settlement, would be co-owners of the estate; and

(The Bengal Settled Estates Bill.—Part III.—Provisions to be contained in first settlements.—Clauses 11, 12.)

- (iii) *if the estate belonged, immediately before the execution of the settlement, to co-sharers—that, after the life of the third tenant for life, the eldest or only son of such tenant shall have during his life the sole right of management over the estate;*

but subject in each case to the terms of any fresh settlement made by a tenant for life in pursuance of permission granted under section 16.

(3) *If the eldest or only son of the settlor has predeceased the settlor, or if the settlor desires to exclude such son from holding the estate on the ground of incapacity or defect of character which is proved by the settlor to the satisfaction of the Local Government, then, notwithstanding anything contained in the foregoing sub-sections, the Local Government may permit him to provide in the settlement—*

- (i) *that the second tenant for life shall be another son of the settlor, if he has another son, or the eldest or only son of the son who has predeceased the settlor or has been excluded as aforesaid, and*

- (ii) *that the third tenant for life shall be the eldest or only son of the second tenant for life, or the eldest or only son of the son who has predeceased the settlor or has been excluded as aforesaid.*

Further remainders.

11. Every settlement made under the foregoing provisions of this Act may also contain provisions for vesting the estate, in the event of the settlement on the second tenant for life or the third tenant for life or his son failing to take effect, in some other person descended from the settlor or the settlor's father in the direct male line.

Further provisions in settlements.

12. (1) Every settlement made under the foregoing provisions of this Act shall specify all incumbrances referred to in clause (ii) of section 8.

(2) Every such settlement shall also contain such provisions as may be approved by the Local Government with regard to the following matters, namely:—

- (a) *the discharge of incumbrances on the estate, and the payment of interest thereon; or their continuance (with or without modification), and the payment of interest thereon;*

- (b) *the maintenance of the co-owners and co-sharers (if any) by or on whose behalf a declaration has been made under clause (ii) of section 5, and of all persons who at the time of the execution of the settlement are, or thereafter may be, legally entitled to maintenance out of the estate;*

- (c) *the management of the estate after the death of the settlor—*

- (i) *during a period not exceeding five years after such death, pending the adoption of a son under the circumstances described in sub-clause (ii) of clause (h) of section 2, or*

- (ii) *during the minority of the second tenant for life;*

- (d) *the management of the estate after the death of the second tenant for life—*

- (i) *during a period not exceeding five years after such death, pending the adoption of a son under the circumstances described in sub-clause (ii) of clause (h) of section 2, or*

- (ii) *during the minority of the third tenant for life;*

- (e) *the management of the estate after the death of the third tenant for life—*

- (i) *during a period not exceeding five years after such death, pending the adoption of a son under the circumstances described in sub-clause (ii) of clause (h) of section 2, or*

- (ii) *during the minority of the next holder.*

(The Bengal Settled Estates Bill.—Part IV.—Supplementary settlements and fresh settlements.—Clauses 13-15.)

(3) If any settlement made under the foregoing provisions of this Act includes money, securities for money or moveable property, the settlement shall contain such provisions as may be approved by the Local Government for vesting such money, securities or property in a trustee, for the investment or conversion of such money or securities in or into securities authorised by section 20 of the Indian Trusts Act, 1882, and for the payment to the trustee of expenses and remuneration in accordance with rules made under section 26, clause (c).

II of 1882.

Explanation.—The Official Trustee of Bengal, the Collector or any private person may be appointed to be a trustee for the purposes of this sub-section.

(4) In addition to the various matters hereinbefore specified, the Local Government may require or permit the insertion in any settlement made under the foregoing provisions of this Act of any provision which it may think fit, and may make its approval of the settlement conditional on the insertion of provisions which it has required to be inserted:

Provided that no provisions inserted in pursuance of this sub-section shall operate to the prejudice of any secured or unsecured creditor unless assented to by him.

PART IV.—Supplementary settlements and fresh settlements.

Supplementary settlement in respect of property.

13. (1) At any time after a settlement has been made under the foregoing provisions of this Act, a tenant for life may apply to the Local Government for permission to make a supplementary settlement for the purpose of adding further property to the settled estate—

[Cf. U. P. Act I of 1900, s. 7.]

- (a) if he is competent to contract,
- (b) if he is in possession of such property, either in his own right or along with or on behalf of others, and
- (c) if such property is held in permanent, heritable and transferable right.

(2) *Provided that no application may be made under sub-section (1) in respect of any property—*

- (i) unless the applicant is solely entitled to the property, or
- (ii) if the property belongs to a joint Hindu family—unless the applicant is the karta or managing member of the family, or
- (iii) if the property belongs to co sharers—unless the applicant is a principal shareholder in the property and has, by custom or with the consent of his co-sharers, the sole right of management over the property.

(3) The provisions of sections 4 to 9 shall apply to every application made under sub-section (1) in respect of any property, and the provisions of sections 10 to 12 shall apply to every settlement of such property, as if the property were an “estate” within the meaning of those sections.

Power to apply for permission to make a supplementary settlement in respect of persons.

14. If, at any time after any settlement has been made under the foregoing provisions of this Act, the second tenant for life dies during the life of the settlor, or the settlor desires to exclude him from holding the estate on the ground of incapacity or defect of character which is proved by the settlor to the satisfaction of the Local Government,

the settlor may, if he is competent to contract, apply to the Local Government for permission to make a supplementary settlement for the purpose of appointing to be second tenant for life and third tenant for life, respectively, any other persons who might have been so appointed in pursuance of clauses (i) and (ii) of sub-section (3) of section 10.

Power to apply for permission to make a fresh settlement.

15. At any time after any settlement has been made under the foregoing provisions of this Act, a tenant for life of a settled estate may, if he is competent to contract, apply to the Local Government for permission to make a fresh settlement of the estate.

(The Bengal Settled Estates Bill.—Part IV.—Supplementary settlements and fresh settlements.—Clauses 16, 17.)

Procedure in dealing with applications under section 14 or 15.

16. (1) The provisions of section 4, sub-section (1), and section 9 shall apply to every application for permission to make a supplementary settlement in respect of persons or a fresh settlement.

(2) If any such application relates to an estate to which the settlor was, immediately before the execution of the former settlements, respectively, solely entitled, the Local Government may, in its discretion, and after such inquiry (if any) as it may think fit to make, by written order, either—

- (i) reject the application, or
- (ii) grant permission to make the proposed settlement.

(3) If any such application relates to an estate which belonged, immediately before the execution of the former settlements, respectively, to a joint Hindu family or to co-sharers, the application must be accompanied by a declaration by all persons (other than the applicant) who, but for such settlements, would be co-owners of or co-sharers in the estate, to the effect that they are willing to assent to the proposed settlement.

(4) If any of such co-owners or co-sharers is, at the time when the application is made, a minor or a lunatic, a declaration under sub-section (3) of this section may be accepted if it is made and approved as indicated in sub-section (2) or sub-section (3), as the case may be, of section 5.

(5) In every case referred to in sub-section (3) of this section, the Local Government

shall send a copy of the application, and of the declarations which accompanied it, to each person who has made a declaration in pursuance of that sub-section;

and, with the previous sanction of the Governor General in Council, shall publish a notification—

- (a) setting forth the application and the declarations which accompanied it;
- (b) calling upon all persons (other than creditors) interested or claiming to be interested in the estate, to send to the Local Government written notice of their interests within a period of six months from the date of the notification, and
- (c) intimating that any objections by such persons to the proposed settlement, which may be communicated to the Local Government in writing within the said period, will be duly considered;

and, at any time after the expiration of the said period, and after considering any notices and objections received under this sub-section, and after such inquiry (if any) as it may think fit to make, may, in its discretion, by written order, either—

- (i) reject the said application, or
- (ii) grant permission to make the proposed settlement.

Provisions as to fresh settlements.

17. (1) The provisions of sections 10, 11 and 12 shall apply to every fresh settlement made in pursuance of permission granted under section 16.

(2) All property, which, immediately before the execution of a fresh settlement in respect of any estate, is included in any former settlement of the estate made under this Act, must be included in such fresh settlement.

(3) No property shall be included in any fresh settlement made under this Act in respect of any estate unless it is, immediately before the execution of such settlement, included in a former settlement of the estate made under this Act.

(4) If any incumbrance, which is dealt with in any former settlement made under this Act in respect of any estate, is still in existence at the time of the execution of a fresh settlement of the estate, then nothing contained in such fresh settlement shall affect the rights of the creditor unless assented to by him.

(5) Every fresh settlement made under this Act in respect of any estate shall, subject to the foregoing provisions of this section, supersede all former settlements made under this Act in respect of such estate.

[U. P. Act
II of 1900, s. 6.]

(The Bengal Settled Estates Bill.—Part V.—Settlements generally.—Clauses 18-21.)

PART V.—Settlements generally.

Approval, stamping
and registration of
settlements.

18. (1) No settlement made under this Act shall take effect unless the instrument of settlement—

[Cr. U. P.
Act II of 1900,
s. 10.]

- (a) is of a non-testamentary character,
- (b) is attested by two or more witnesses,
- (c) has been approved by the Local Government before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the Local Government,
- (d) bears a stamp of the full value prescribed by sub-section (2), or, if the sanction of the Board of Revenue has been given under sub-section (3), of one-third of such value, and
- (e) is registered within three months after the said approval has been certified as aforesaid.

(2) Every instrument of settlement made under this Act, not being a supplementary settlement referred to in section 14 or a fresh settlement referred to in section 15, shall, notwithstanding anything contained in the Indian Stamp Act, 1899, bear a stamp of a value equivalent to one-fourth of the annual net profits of the estate comprised in the settlement:

II of 1899.

(3) Provided that a stamp of one-third of such value may be affixed, with the previous sanction of the Board of Revenue, on arrangements being made to its satisfaction for the affixing of stamps for the rest of such value at subsequent dates within three years from the date of the instrument.

(4) If any question arises, with reference to sub-section (2) or sub-section (3), as to the amount of the annual net profits of any estate, the decision of the Board of Revenue thereon shall be final.

(5) Every instrument making a supplementary settlement referred to in section 14 or a fresh settlement referred to in section 15 shall, notwithstanding anything contained in the Indian Stamp Act, 1899, bear a stamp of ten rupees.

II of 1899.

(6) Subject to the foregoing provisions of this section, every instrument of settlement shall take effect from the date of its execution.

Bar to application of
succession laws, in
respect of property
comprised in settle-
ment.

19. (1) Notwithstanding anything contained in the Indian Succession Act, 1865, the Probate and Administration Act, 1881, or the Succession Certificate Act, 1889, it shall not be necessary for any person to obtain probate or letters of administration or a certificate under the last-mentioned Act to admit of his taking any property or recovering any debt or realising any security in virtue of a settlement made under this Act.

X of 1865,
V of 1881,
VII of 1889.

(2) If any probate, any letters of administration or any certificate granted under the Succession Certificate Act, 1889, purports to cover any property, debt or security which is comprised in a settlement made under this Act, then, notwithstanding anything contained in Article 11 or Article 12 of Schedule I to the Court-fees Act, 1870, no court-fee shall be levied under either of those Articles in respect of such property, debt or security.

VII of 1889.

VII of 1870.

Power of Local
Government to grant
certificates after death
of tenant for life.

20. At any time after the death of any tenant for life of a settled estate, any of the Secretaries to the Local Government may, upon the application of any person claiming a right to hold the settled estate under the instrument of settlement, grant a certificate to such person declaring him to be entitled to hold such estate under such instrument; and such certificate shall be presumed to be correct unless and until the contrary is proved.

Notification of instru-
ments of settlement.

21. (1) When any instrument of settlement is registered, the registering-officer shall report the fact to the Local Government; and, on receipt of such report, the Local Government shall publish a notification stating the purport of the instrument and the office in which it has been registered.

[Cr. U.P. Act
II of 1900, s. 12
(2).]

(The Bengal Settled Estates Bill.—Part V.—Settlements generally.—Part VI.—Revocation, cancellation and amendment of settlements.—Clauses 22-24.)

(2) *The Collector shall cause a copy of every such notification to be posted in his office, and to be published on the settled estate at such places and in such manner as may in his opinion be sufficient for giving information to tenants and other persons interested.*

Abrogation of inconsistent laws.

22. No settlement or part of a settlement made under this Act shall be liable to be avoided or set aside by any Civil Court by reason only that it contravenes—

(a) any provision of the Transfer of Property Act, 1882, IV of 1882, or

(b) any law or rule for the time being in force for the prevention of perpetuities, or

(c) any family custom or any personal law or law of succession to which the family is subject,

which is inconsistent with the provisions of this Act.

PART VI.—Revocation, cancellation and amendment of settlements.

Revocation of settlement by tenant for life.

23. (1) A tenant for life of a settled estate may, at any time, if he is competent to contract, apply to the Local Government for permission to revoke, either wholly or as respects any particular property, any settlement made under this Act. [Cf. U. P. Act II of 1900, s. 8.]

(2) The Local Government, after considering the application, and the result of any inquiry made by it or under its orders, and any further particulars or information called for by it, may, in its discretion, by written order, either—

(a) reject the application, or

(b) grant the permission applied for, or

(c) grant permission to revoke the settlement as respects such property only as may be specified in the order.

(3) *When permission is granted under sub-section (2) to revoke a settlement, either wholly or as respects any particular property, the revocation shall not take effect unless the instrument of revocation—*

(i) *is of a non-testamentary character,*

(ii) *is attested by two or more witnesses,*

(iii) *has been approved by the Local Government before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the Local Government,*

(iv) *is stamped in accordance with the provisions of the Indian Stamp Act, 1899, and*

(v) *is registered within three months after the said approval has been certified as aforesaid.* II of 1899.

(4) *Subject to the foregoing provisions of this section, every such instrument shall take effect from the date of its execution.*

Cancellation or amendment of settlement by Local Government.

24. (1) Notwithstanding anything hereinbefore contained, the Local Government may at any time declare by notification that any settlement made under this Act in respect of a settled estate shall be deemed— [Cf. U. P. Act II of 1900, s. 14.]

(a) to be cancelled, or

(b) to be amended so as to exclude any part of the estate described in the notification.

(2) *On the publication of such notification the said settlement shall be deemed to be cancelled or amended as aforesaid, as the case may be.*

(The Bengal Settled Estates Bill.—Part VI.—Revocation, cancellation and amendment of settlements.—Part VII.—Rights and powers of tenant for life, and protection of settled estate during his life.—Clauses 25-29.)

Revival of incumbrances on revocation, cancellation or amendment of settlement.

25. When any instrument of settlement is revoked under section 23 or cancelled or amended under section 24, the rights of all persons having incumbrances on the estate shall, notwithstanding anything contained in the Indian Limitation Act, 1877, revive and be enforceable as if the settlement had not been made, but subject to any payments which were made while the settlement was in force.

XV of 1877.

PART VII.—Rights and powers of tenant for life, and protection of settled estate during his life.

Right of tenant for life to profits of settled estate.

26. All profits of a settled estate, which are realised by a tenant for life, or which, immediately before his death, were due to him but were not realised by him, shall, subject to the other provisions of this Act, belong absolutely to such tenant or his heirs, executors, administrators or assigns:

Provided that, if any rents due to a tenant for life in respect of a settled estate were in arrear immediately before his death, the same shall, upon his death, notwithstanding anything contained in this Act, or in the Indian Succession Act, 1865, or in any other law, or in any settlement made under this Act, and notwithstanding any will or other disposition made by such tenant, become due to the next holder of the estate.

X of 1865.

Restriction on alienation by tenant for life.

27. Except as provided in sections 28 and 29, a tenant for life of a settled estate shall not be entitled to transfer by way of sale or gift, or otherwise alienate, or to create any incumbrance upon, or to lease, the estate, or any part thereof, or to assign his right to receive any of the profits thereof.

[Cf. U. P. Act II of 1900, s. 15.]

Sales by tenant for life.

28. (1) A tenant for life of a settled estate may, with the previous written sanction of the Civil Court, sell the estate or any part thereof.

(2) If the estate belonged, immediately before the execution of the settlement, to a joint Hindu family or to co-sharers, the Court shall, before determining to accord such sanction, notify the proposed sale to all persons (except the tenant for life) who, but for the settlement, would be co-owners or co-sharers in the estate; and shall hear and duly consider any objection which may be advanced by them or on their behalf.

(3) The proceeds of every such sale shall be paid by the purchaser to the Collector; and shall be held by the Collector in trust to re-invest the same, with the approval of the Local Government, in immoveable property, which shall, upon such re-investment, be and remain subject to the settlement in like manner as if it had been originally comprised therein.

Leases by tenant for life.

29. (1) A tenant for life of a settled estate may lease the estate or any part thereof from year to year or for any term not exceeding seven years, or (with the previous written consent of the Collector) for any longer term not exceeding fourteen years, or (with the previous sanction of the Local Government) for any longer term of years or in perpetuity.

[Cf. U. P. Act II of 1900, s. 16.]

(2) No premium or fine shall be taken on any such lease granted for a term exceeding seven years, or in perpetuity, except with the previous written consent of the Collector.

(3) When any premium or fine is taken on any lease granted under sub-section (1), then—

(a) if the lease is from year to year or for a term of years, a sum equivalent to four-fifths of the amount of the premium or fine, or

(b) if the lease is in perpetuity, the whole of the premium or fine

shall be paid—

(i) to the trustee appointed for the purposes of section 12, sub-section (3), or

(ii) if no trustee has been so appointed, to a trustee to be appointed for the purpose;

(The Bengal Settled Estates Bill.—Part VII.—Rights and powers of tenant for life, and protection of settled estate during his life.—Clauses 30-33.)

and shall be held by such trustee as part of the settled estate, and shall be invested by him in securities authorized by section 20 of the Indian Trusts Act, 1882: II of 1882.

Provided that such trustee may retain, for the payment of his expenses and remuneration, such portion of the amount paid to him as may be authorised by rules made under section 36, clause (c).

(4) In respect of every such lease the best rent shall be reserved that can reasonably be obtained.

(5) No payment of any instalment of such rent made to a tenant for life before it falls due shall operate to the prejudice of any subsequent holder of the estate.

Saving of leases of raiyati holdings.

30. Nothing in section 27 or sub-sections (1) and (2) of section 29 shall apply to leases of raiyati holdings. [Cf. U. P. Act II of 1900, s. 19.]

Bar to sale of settled estate in execution of decree.

31. (1) No settled estate or part thereof shall, during the life of a tenant for life, be sold in execution of a decree of a Civil Court.

(2) If any decree against a tenant for life of a settled estate is not satisfied, the Court may, on the application of the decree-holder, appoint a Receiver of such estate or any part thereof, under the provisions of Chapter XXXVI of the Code of Civil Procedure, for the purpose of recovering the amount of the decree and, subject to the rights of any secured creditor over such estate or part, satisfying the claims of the decree-holder. XIV of 1882.

(3) An appeal shall lie to the High Court from any order made by a Court under sub-section (2).

Sale of settled estate for arrears of land-revenue, &c.

32. (1) Notwithstanding anything contained in the Bengal Land-revenue Sales Act, 1859; or any other law, no settled estate or part of a settled estate shall, without the previous sanction of the Local Government, be sold, during the life of any tenant for life thereof, for an arrear of land-revenue or for any other arrear which is recoverable in the same manner as an arrear of land-revenue. [Cf. Ben. Act IX of 1879, s. 23, cl. (1).] XI of 1859.

(2) If any settled estate or part of a settled estate be sold, with the sanction required by sub-section (1) of this section, to any person other than the tenant for life, the resulting surplus shall be dealt with in the manner described in sub-section (3) of section 28;

and, if the estate or any part thereof be purchased at the sale by the tenant for life, the resulting surplus shall be paid to the tenant for life, and the estate or part so purchased shall, notwithstanding the sale, continue to be subject to the settlement.

(3) If the person whose name is entered in any certificate granted under the said Bengal Land-revenue Sales Act, 1859, or any other law, as purchaser of a settled estate or part thereof, is not the tenant for life, the said resulting surplus may be retained by such person, and shall not be payable to the tenant for life, even though it may be claimed that the purchase was made by such person on behalf of the tenant for life. XI of 1859

Procedure for recovery of such arrears.

33. (1) If any such arrear accrues in respect of a settled estate, or any part thereof, during the life of any tenant for life thereof, and if the sale of the estate or part for the recovery of the arrear is not sanctioned by the Local Government under section 32, the Collector may attach the estate or part, [Cf. Ben. Act IX of 1879, s. 23, cl. (2).]

and shall thereupon be entitled, to the exclusion of all other persons, to receive all rents and other moneys (if any) due to such tenant in respect of such estate or part,

and may manage the estate or part either directly or through a manager, for such period as may be necessary for the recovery of such arrear.

(*The Bengal Settled Estates Bill.—Part VIII.—Miscellaneous.—*
Clauses 34-38.)

(2) Upon the expiration of the period referred to in sub-section (1), the Collector shall deduct from the proceeds of the management the amount of the said arrear and of any similar arrears that may have accrued during such period, and any interest due thereon, and the expenses incurred in the management; and shall then—

[*Of Ben. Act IX of 1879, s. 23 prov.*]

- (a) pay the balance of such proceeds to the person then entitled to hold the estate, and
- (b) furnish such person with an account of the receipts and expenditure during the management, and
- (c) release the estate or part to such person.

(3) If, after a settled estate or part thereof held by a tenant for life has been managed and released by the Collector under sub-sections (1) and (2), any such arrear as aforesaid again accrues in respect of the estate or part during the life of the same tenant, and if the sale of the estate or part thereof for the recovery of the arrear is not sanctioned by the Local Government under section 32,

the Court of Wards may take charge of and deal with the estate or part under the provisions of the Court of Wards Act, 1879; and may retain such charge until the death of such tenant and, if the next holder is then a minor, until such minor attains his majority;

[*Ben. Act IX of 1879.*]

and the said tenant shall, while the Court of Wards has charge of the estate or part, be debarred from receiving any income from the estate or part, other than such monthly sum as the Court of Wards may allow for the support of himself and his family;

and the powers conferred by sections 28 and 29 of this Act shall, while the Court of Wards has charge of the estate or part, be exerciseable by the Court of Wards and not by the said tenant.

PART VIII.—*Miscellaneous.*

Form, publication and duration of permissions granted by Local Government.

34. (1) Every permission granted by the Local Government under section 8, section 10, sub-section (3), section 12, sub-section (4), section 13, section 16 or section 23 shall be in writing signed by one of the Secretaries to the Local Government, and shall contain a description of the property or person in respect of which the permission is granted, sufficient to identify the same.

[*Of U. P. Act II of 1900, s. 9.*]

(2) Every permission granted by the Local Government under section 8, section 13, section 16 or section 23 shall be published by notification, and shall remain in force until the expiry of twelve months from the date of the notification, or until the death of the applicant, whichever first happens.

Notifications how to be published.

35. Every notification prescribed by this Act shall be published in the Calcutta Gazette and also in such Vernacular Gazettes (if any) as the Local Government may direct.

[*Of U. P. Act II of 1900, ss. 5, 9, (2), 13 (2), 14.*]

Power to make rules.

36. (1) The Local Government may, after previous publication, make rules for carrying out the purposes of this Act.

[*Of U. P. Act II of 1900, s. 20.*]

(2) In particular, and without prejudice to the generality of the foregoing provision, the Local Government may make rules for all or any of the following matters, namely:—

- (a) the procedure to be followed in submitting an application to the Local Government under this Act;
- (b) the form and contents of such applications, and the documents (if any) which should accompany them;
- (c) the payment to trustees, out of the trust property, of expenses properly incurred in or about the execution of any trust created under this Act, and of remuneration for their trouble, skill and loss of time in executing any such trust;
- (d) the guidance of the Collector in managing estates attached under section 33;
- (e) the payment or recovery of any expenses incurred by the Government in connection with any proceedings taken under this Act.

[*Of Act II of 1882, ss. 32, 30.*]

*Application of Court
of Wards Act, 1879.*

37. The provisions of the Court of Wards Act, 1879, so far as *Ben. Act IX* they are not inconsistent with the terms of settlements duly made *of 1879.* under this Act, shall be applicable to settled estates.

*Saving of rights of
secured creditors.*

38. Nothing in this Act shall affect the rights of any secured creditor—

- (a) if his incumbrances or any of them have not been set forth in the list prescribed by section 4, clause (c), or
- (b) if he has not assented to any condition inserted in a settlement made under this Act for the discharge or continuance of his incumbrances or any of them.

F. G. WIGLEY,

Secretary to the Bengal Council and
Asstt. Secy. to the Govt. of Bengal,
Legislative Department.

CALCUTTA;

The 2nd February, 1904. }

THE following Report of the Select Committee on the Bengal Public Parks Bill, together with the Bill as amended by the Committee, is, by order of the President, published for information :—

REPORT OF THE SELECT COMMITTEE.

WE, the undersigned, Members of the Select Committee appointed to consider the Bill for the regulation of Public Parks in Bengal, have considered the Bill and the papers noted in the margin, and have the honour to submit this our Report, with the Bill as amended by us annexed hereto.

(1) Letter, dated the 9th January, 1904, from Babu Shrish Chunder De [Paper No. 1.]

(2) Letter from the Secretary, Muhammadan Defence Association, No. 190G/65P, dated the 14th January, 1904 [Paper No. 2.]

2. The amendments which we have made in the Bill are printed in italics, and the principal amendments are explained in the following paragraphs.

3. *Clause 3* is new. It empowers the Local Government to declare that any specified land, bridge or pontoon shall, for the purposes of the Bill, be deemed to be included in any park. The clause is required in order to admit of the extension of the Bill to the pontoon at the river-entrance to the Royal Botanic Garden, Sibpur, since offences against some of the rules referred to in clause 4 of the Bill might be committed there. The clause will also be useful in other cases which need not be mentioned in detail.

4. *Clause 4*.—The list of particular purposes for which rules may be made has been amplified.

5. *Clause 6*.—The word “detained” has been substituted for the word “arrested,” because the latter word implies a touching or confining of the body of the offender (*see* section 46 of the Code of Criminal Procedure, 1898), and such action will not ordinarily be necessary in the cases referred to in this clause, which are those of an offender refusing to give his name and residence.

The maximum period for which an offender may be detained under this clause has been reduced from 24 to 12 hours.

6. *Clause 7*.—For clause 7 of the Bill as introduced in Council we have substituted a clause which will have the effect of bringing superintendents and park-durwans within the category of public servants for the purposes of Chapters IX and X of the Indian Penal Code.

7. We recommend that the Bill, as now amended, be passed.

C. E. BUCKLAND.

B. L. GUPTA.

R. T. GREER.

TARINI PERSHAD.

RAVNESWAR PROSHAD SINGH.

BHUPENDRA NATH BASU.

CALCUTTA;

The 23rd January, 1904.

THE BENGAL PUBLIC PARKS BILL, 1904

(AS AMENDED BY THE SELECT COMMITTEE.)

(The amendments made by the Committee are printed in italics.)

[Explanation of marginal notes :—

“Bot.” means the rules of the Sibpur Botanic Garden, printed on the 15th April, 1898.

“Zoo.” means the rules of the Alipur Zoological Garden, printed on the 30th January, 1899.]

A

BILL

for the regulation of Public Parks in Bengal.

WHEREAS it is expedient to protect public parks and gardens in Bengal from injury, and to secure the public from molestation and annoyance while resorting to such parks and gardens; [Cf. 35 & 36 Viet., c. 15, preamble.]

It is hereby enacted as follows :—

Short title and application.

1. (1) This Act may be called the Bengal Public Parks Act, 1904.

(2) It applies to the public parks and gardens mentioned in the Schedule, and may be applied to any other public park or garden in Bengal by order of the Local Government published in the Calcutta Gazette.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “park” means any public park or garden to which this Act applies by virtue of section 1, sub-section (2), or any order published thereunder;

(b) “superintendent” means the person in executive charge of a park; and, for the purposes of section 6, sub-section (2), includes also—

(i) an assistant superintendent of a park, and

(ii) any member of the Managing Committee (if any) of a park; and

(c) “park-durwan” means any person appointed by the superintendent, or by the authority to whom the superintendent is subordinate, to act as a durwan of the park.

Power to extend town-daries of park.

3. The Local Government may, by notification in the Calcutta Gazette, declare that any specified land, bridge or pontoon shall, for the purposes of this Act, be deemed to be included in any park.

Power to make rules.

4. (1) The Local Government may make [Cf. 35 & 36 Viet., c. 15, s. 4.] rules for the management and preservation of any park, and for regulating the use thereof by the public.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(a) regulate the admission of persons, horses and ponies, and carriages, palanquins and other conveyances, into the park, and prescribe fees to be paid therefor; [Zoo., rules 8 to 13 and 15; Bot., rule 2.]

(The Bengal Public Parks Bill.—Clauses 5, 6.)

- (b) prohibit or regulate the bringing of dogs, [Bot., rule 17;
Zoo., rule 15.] motor cars, bicycles or tricycles into the park;
- (c) prohibit the doing of all or any of the following things by persons other than employes of the park, that is to say, [Bot., rule 6; Zoo., rule 15.] plucking or gathering anything growing in the park, breaking trees, branches or plants, cutting names or marks on trees, disfiguring buildings, furniture or monuments, removing or disfiguring labels or marks attached to trees or plants;
- (d) prohibit the purchase of any produce of the park otherwise than from the superintendent or some other authorised person; [Bot., rules 7, 8.]
- (e) prohibit shooting, bird-nesting, the catching of butterflies, or any act of cruelty; [Bot., rule 13;
Zoo., rule 15.]
- (f) prohibit or regulate fishing or boating, and prescribe fees to be paid by persons obtaining permission to fish or to use boats; [Zoo., rule 10 (c).]
- (g) prohibit bathing or the pollution of water by any other means; [Bot., rule 13; Zoo., rule 15.]
- (h) prohibit the grazing of horses or ponies; [Bot., rule 12.]
- (j) prohibit the teasing or annoying of animals or birds kept in the park; [Zoo., rule 15.]
- (k) prohibit the commission of any nuisance, or the molestation or annoyance of any person resorting to the park.

(3) In making any rule under this section, the Local Government may direct that a breach thereof shall be punishable with fine which may extend to one hundred rupees.

(4) The power to make rules under this section is subject to the condition that they shall be made after previous publication.

(5) All rules made under this section shall be published in the Calcutta Gazette.

Exhibition of
copies of rules
in park.

5. One or more copies, in English and in one or more vernacular languages, of every notification published under section 2, and of all rules made under section 4 for observance by persons resorting to a park, and for the time being in force, shall be put up in the park in such conspicuous manner as the superintendent may deem best calculated to give information to such persons. [Cf. 35 & 36 Vict., c. 15, s. 10.]

Refusal of
offender to
give name and
residence.

6. (1) If any person who, in the presence of a park-durwan in uniform, has committed or has been accused of committing a breach of any rule made under section 4, and who is unknown to such durwan, refuses, on demand of such durwan, to give his name and residence, or gives a name or residence which such durwan has reason to believe to be false, such person may be detained by such durwan in order that his name or residence may be ascertained. [Cf. 35 & 36 Vict., c. 15, s. 5; Act V, 1898, s. 57.]

(2) When any person is detained under subsection (1) he shall forthwith be taken to the superintendent, or, if the superintendent be not present in the park or its immediate precincts, such person shall be taken to the nearest police-station, or, if he so requests, to the nearest Magistrate having jurisdiction to try him.

(The Bengal Public Parks Bill.—Clauses 7-9 ;
Schedule).

(3) If the true name and residence of any person so taken to the superintendent be not ascertained within a reasonable time, the superintendent shall forthwith send for an officer of police, and shall detain the offender until the arrival of such an officer, and shall then deliver him into the custody of such officer to be taken to the nearest police-station.

(4) If the true name and residence of any person taken to a police-station under this section be not ascertained within a reasonable time, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction to try him.

(5) When the true name and residence of any person detained under this section have been ascertained, he shall be allowed to depart.

(6) No person shall be detained under this section for a longer period than twelve hours.

Superintendent and park-durwan deemed "public servants." 7. Every superintendent and park-durwan shall, for the purposes of the Indian Penal Code, be deemed to be a public servant. [Cf. Act XVIII of 1887, s. 18 (2).] XLV of 1860.

General powers, duties, etc., of park-durwan. 8. Every park-durwan shall, in addition to any powers and immunities specially conferred on him by this Act or by rules made hereunder, have, within the limits of the park to which he is appointed, all such powers, privileges and immunities, and shall, within the said limits, be liable to all such duties and responsibilities, as a police-constable has and is liable to within the limits of the police-station in which such park is comprised: [Cf. 35 & 36 Vict., c. 15, s. 7; Act V, 1898, s. 4 (s).]

Provided that every park-durwan shall be subordinate to the superintendent.

General powers, etc., of police-constables. 9. Every police-constable employed within the limits of a police-station shall have, within any park comprised in such limits, the powers, privileges and immunities conferred on a park-durwan by this Act and any rules made hereunder. [Cf. 35 & 36 Vict., c. 15, s. 8; Act V, 1898, s. 4 (s).]

THE SCHEDULE.

PUBLIC PARKS AND GARDENS TO WHICH THIS ACT APPLIES IN THE FIRST INSTANCE.

[See section 1, sub-section (2).]

The Royal Botanic Garden, Sibpur.
The Zoological Garden, Alipur.
The Eden Gardens, Calcutta.
The Lloyd Botanical Garden, Darjeeling.
The Victoria Pleasance, Darjeeling.

F. G. WIGLEY,

CALCUTTA,
The 2nd February, 1904. }

Secretary to the Bengal Council and
Assistant Secretary to the Govt. of Bengal,
Legislative Department.



The Calcutta Gazette.

WEDNESDAY, MARCH 16, 1904.

PART IV.

Rules of the Bengal Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

THE following Amendments in the Rules for the conduct of the legislative business of the Bengal Council, which were made by the Council at a meeting held on the 12th instant and received the assent of the Lieutenant-Governor on the same date, are hereby published for general information:—

AMENDMENTS IN THE RULES FOR THE CONDUCT OF THE LEGISLATIVE BUSINESS OF THE BENGAL COUNCIL.

I. In rule 30, for the words "At any subsequent meeting, not being less than three days after the printed copies have been in the hands of Members," substitute the following, namely:—

At the meeting at which leave to bring in a Bill has been obtained, or at any subsequent meeting.

II. For rule 31 substitute the following, namely:—

31. When a Bill is introduced, or at any subsequent meeting of the Council, the Member in charge of it may make one or more of the following motions:—

- (a) that it be referred to a Select Committee, or
- (b) that it be taken into consideration by the Council, either at once or at some specified future day, or
- (c) that it be circulated for the purpose of eliciting opinion thereon.

III. In rule 32, for the words "No such motion" substitute the following, namely:—

No motion referred to in rule 31.

IV. In rule 33, for the words "such motion" substitute the following, namely:—

any motion referred to in rule 31.

V. After rule 33 insert the following, namely:—

33A. When a Bill has been introduced, it shall, together with the Statement of Objects and Reasons, be published in the Calcutta Gazette; and the Council may direct that the Bill and Statement be published also in all or any of the Vernacular Official Gazettes.

Publication of Bills.

VI. After rule 43 insert the following, namely:—

43A. Any Member may move that a Bill which has been amended by the Council or by a Select Committee be re-published or be re-committed to the Select Committee.

Re-publication or re-commitment of amended Bill.

Such re-commitment may be either—

- (a) without limitation, or
- (b) with respect to particular clauses or amendments only or
- (c) with instructions to the Select Committee to make some particular or additional provision in the Bill.

If the Council so decide, the President may order that the Bill be re-published or re-committed, as the case may be.

VII. For clause (3) of rule 50 substitute the following, namely:—

(3) to keep a list of the business for the time being before the Council.

VIII. After rule 54 insert the following, namely:—

54A. Any Bill respecting which no motion has been made in the Council for two years may, by order of the President, be removed from the list of business.

Dropped Bills.

CALCUTTA;
The 14th March, 1904.

}

F. G. WIGLEY,
Secretary to the Bengal Council.



The Calcutta Gazette.

WEDNESDAY, MARCH 30, 1904.

PART IV.

Bills of the Bengal Council.

GOVERNMENT OF BENGAL.
LEGISLATIVE DEPARTMENT.

THE following Bill was introduced in the Council of the Lieutenant-Governor of Bengal on the 26th March, 1904, and is hereby published for information, together with the Statement of Objects and Reasons:—

A

BILL

To amend the Bengal Local Self-Government Act of 1885.

CONTENTS.

PREAMBLE.

CLAUSE.

1. Short title.
2. Repeal of portions of Bengal Act III of 1885.
3. New section 10—
 10. Power to appoint members of District or Local Board, if prescribed proportion not duly elected.
4. New sections 19 and 19A—
 19. Filling of casual vacancies.
 - 19A. Term of office of members of District Board or Local Board.
5. Amendment of section 22.

CLAUSE.

6. New section 23A—

23A. Appointment of Chairman or Vice-Chairman of District Board on failure to elect.

7. Amendment of section 25.

8. New sections 26 and 26A—

26. Vice-Chairman of Local Board.

26A. Leave of absence to Chairman or Vice-Chairman of District or Local Board.

9. New sections 29 and 29A—

29. Casual vacancies in office of Chairman or of Vice-Chairman of District or Local Board.

29A. Term of office of Chairman and Vice-Chairman.

10. Amendment of section 32.

11. New section 35A—

35A. Provident or Annuity Fund.

12. Amendment of section 36.

13. New section 41A—

41A. Chairman of Union Committee.

14. Amendment of section 44.

15. New sections 46A to 46E—

46A. Power to impose a rate when District Board has guaranteed interest on capital expended on railway or tramway.

46B. Amount of such rate.

46C. Assessment, payment and recovery of such rate.

46D. Application of proceeds of such rate.

46E. Cessation of levy of rate when required sum collected.

16. Addition to section 48.

17. Amendment of section 52.

18. Amendment of section 53.

19. Amendment of section 56.

20. Amendment of section 59.

21. New section 61—

61. Pounds.

22. Addition to section 63.

23. Addition to section 67.

24. Addition to section 70.

25. Amendment of section 73.

26. Amendment of section 82.

CLAUSE.

27. New sections 86A to 86L—

86A. *Power of District Board to establish toll-bars and levy tolls on bridges.*

86B. *Lease of toll-bar.*

86C. *Exemptions.*

86D. *Rates of tolls.*

86E. *Table of tolls to be hung up.*

86F. *Power to compound for tolls.*

86G. *Power of toll-collector or lessee in case of refusal to pay toll.*

86H. *Penalty for refusing to pay toll.*

86J. *Police officers to assist.*

86K. *Penalty for taking unauthorised tolls.*

86L. *District Board to publish expenses, &c., of toll-lars.*

28. New section 88A—

88A. *Power to contribute towards cost of municipal water-supply.*

29. Amendment of section 100.

30. Amendment of sections 105 to 107 and 117.

31. Amendment of section 108.

32. Amendment of section 109.

33. Amendment of section 110.

34. New section 111—

111. *Pounds.*

35. New section 114—

114. *Registration of births and deaths.*

36. New section 119A—

119A. *Subordination of Union Committee to District Board or Local Board.*

37. Amendment of section 130.

38. New section 133—

133. *Disputes between two or more Union Committees when to be referred to District Board or Local Board.*

39. Amendment of section 138.

40. Amendment of section 142.

41. Addition to section 144.

42. Amendment of Schedule III.

**THE BENGAL LOCAL SELF-GOVERNMENT
(AMENDMENT) BILL, 1904.**

[New matter is, as far as possible, printed in italics.]

A

BILL

To amend the Bengal Local Self-Government Act of 1885.

WHEREAS it is expedient to amend the Bengal Local Self-Government Act of 1885 in manner hereinafter appearing;

Ben. Act III
of 1885.

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bengal Local Self-Government (Amendment) Act, 1904.

Repeal of portions of
Bengal Act III of 1885.

2. The following portions of the Bengal Local Self-Government Act, 1885, are hereby repealed, namely:—

Ben. Act III
of 1885.

in section 1, the words “or of the districts of Singhbhum, the Sonthal Parganas or the Chittagong Hill-tracts”;

the proviso in section 6;

section 16;

section 24;

the last paragraph of section 25;

section 34;

section 72;

the proviso to section 73;

in section 103, the words “A Local Board shall exercise powers of supervision and control over all Union Committees within the area under its authority, and”, and section 104.

New section 10.

3. For section 10 of the said Act the following shall be substituted, namely:—

“10. If, within the time prescribed by rules made by the Lieutenant-Governor under this Act, the prescribed proportion of elected members of any District Board or Local Board is not duly elected, the Lieutenant-Governor may appoint members to make up that proportion.”

Power to appoint members of District or Local Board, if prescribed proportion not duly elected.

New sections 19 and 19A.

4. For section 19 of the said Act the following shall be substituted, namely:—

“19. (1) When the place of an elected member of a District Board or Local Board becomes vacant by his resignation, removal or death, a new member shall be elected, in accordance with the rules made by the Lieutenant-Governor under this Act, to fill the place:

Provided that if, within the time prescribed by rules made by the Lieutenant-Governor under this Act, no new member is duly elected, the Lieutenant-Governor may appoint a new member to fill the place.

(2) When the place of an appointed member of a District Board or Local Board becomes vacant as aforesaid, the Lieutenant-Governor may appoint a new member to fill the place.

The Bengal Local Self-Government (Amendment) Bill, 1904.

(Clauses 5-9.)

(3) No act of any District Board or Local Board or of its officers or of the Board in meeting shall be deemed to be invalid by reason only of the fact that the number of members of the Board, at the time of the performance of the act, was less than the prescribed number.

19A. (1) A member of a District Board or Local Board who has been appointed by official designation shall, subject to sections 17 and 18 of this Act, and unless the Lieutenant-Governor otherwise directs, continue to be a member of the Board while he continues to hold the office to which such designation refers.

Term of office of mem-
bers of District Board or
Local Board. [Cf. Ben. Act
III of 1886 s.
16 and s. 19,
last para.]

(2) A member of a District Board or Local Board who has been elected or appointed under section 19 shall, subject as aforesaid, hold office until the person whose place he fills would regularly have gone out of office, and shall then go out of office.

(3) In cases not provided for by sub-section (1) or sub-section (2) of this section, the term of office of a member of a District Board or Local Board shall be fixed by the Lieutenant-Governor by rules which may provide for the retirement of members by rotation.

(4) An outgoing member of a District Board or Local Board may, if otherwise qualified, be re-elected or re-appointed."

Amendment of section 22.

5. In section 22 of the said Act, after the word "elected," the words "either by name or by virtue of his office" shall be inserted.

New section 23A.

6. After section 23 of the said Act the following shall be inserted, namely:—

"23A. If any District Board fails to elect a Chairman or Vice-Chairman within the time prescribed by rules made by the Lieutenant-Governor under this Act, the Lieutenant-Governor may appoint a Chairman or Vice-Chairman, as the case may be."

Appointment of Chairman or Vice-Chairman of District Board on failure to elect.

Amendment of section 25.

7. In section 25 of the said Act, after the word "elected" the words "either by name or by virtue of his office" shall be inserted.

New sections 26 and 26A.

8. For section 26 of the said Act the following shall be substituted, namely:—

"26. (1) Every Local Board shall from time to time, within a period prescribed by rules made by the Lieutenant-Governor under this Act, elect one of its members to be Vice-Chairman.

Vice-Chairman of Local Board.

(2) If any Local Board fails to elect a Vice-Chairman within such period, the Lieutenant-Governor may appoint a Vice-Chairman.

"26A. A District Board or Local Board may grant leave of absence to their Chairman or Vice-Chairman for any period not exceeding three months in any one year."

Leave of absence to Chairman or Vice-Chairman of District or Local Board. [Cf. Ben. Act
III of 1884, s.
26B.]

New sections 29 and 29A.

9. For section 29 of the said Act the following shall be substituted, namely:—

"29. (1) If a Chairman of a District Board dies, resigns, is removed, becomes incapable of acting, or avails himself of leave granted under section 26A, the Lieutenant-Governor may appoint a new Chairman, or may direct that, within a period prescribed by

Casual vacancies in office of Chairman or of Vice-Chairman of District or Local Board.

The Bengal Local Self-Government (Amendment) Bill, 1904.
(Clauses 10, 11.)

rules made by the Lieutenant-Governor under this Act, a new Chairman be elected by the members of the Board from among their own number, subject to his approval.

(2) If a Chairman of a Local Board or a Vice-Chairman of a District Board or Local Board dies, resigns, is removed, becomes incapable of acting, or avails himself of leave granted under section 26A, the Board shall, at a special meeting held for the purpose within a period prescribed by rules made by the Lieutenant-Governor under this Act, elect from among its members a new Chairman or Vice-Chairman, as the case may be.

(3) If any District Board or Local Board fails to elect a new Chairman or Vice-Chairman within the prescribed period, the Lieutenant-Governor may appoint a new Chairman or Vice-Chairman, as the case may be.

“29A. (1) The term of office of an elected Chairman or Vice-Chairman of a District Board or Local Board, or of an appointed Vice-Chairman of a District Board or Chairman or Vice-Chairman of a Local Board, shall, subject to sections 27 and 28 of this Act, be the residue of his term of office as a member of the Board.”

[Cf. Ben. Act III of 1888, s. 24; s. 25, last para.; s. 26, second para., and s. 29, third para.]

(2) The term of office of an appointed Chairman of a District Board shall, subject as aforesaid, be one year from the date of his appointment; but he may be re-appointed on the expiration of that term.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the term of office of a Chairman or Vice-Chairman appointed or elected to fill a casual vacancy consequent upon the grant of leave under section 26A shall expire upon the return from leave of the person whose office he was appointed or elected to fill.

[Cf. Ben. Act III of 1884, s. 27.]

(4) Every appointed Chairman of a District Board shall be deemed to be a member of the Board during his term of office.”

Amendment of section 32.

10. In clause (g) of section 32 of the said Act, for the words “leave, suspension and removal” the words “leave, leave allowances and punishment (including suspension and removal)” shall be substituted.

New section 35A.

11. After section 35 of the said Act the following shall be inserted, namely:

“35A. A District Board may, from time to time, with the sanction of the Lieutenant-Governor, make rules—

[Cf. Ben. Act III of 1884, s. 47.]

(a) for the creation and management of a Provident or Annuity Fund,

(b) for compelling members of their establishment to make contributions to such Fund,

(c) for supplementing such contributions by payments out of the District Fund, and

(d) for the payment of moneys out of such Provident or Annuity Fund;

and may, with the like sanction, repeal, add to or alter such rules.”

The Bengal Local Self-Government (Amendment) Bill, 1904.
(Clauses 12-15.)

Amendment of section 36.

12. In the proviso to section 36 of the said Act, before the words "Local Board" the words "*District Board or*" shall be inserted, and before the word "subordinate" the words "*for the purposes of this section*" shall be inserted.

New section 41A.

13. After section 41 of the said Act the following shall be inserted, namely:—

"41A. Every Union Committee shall, from time to time, elect
Chairman of Union one of its members to be Chairman of the Committee."

Amendment of section 44.

14. In section 44 of the said Act,—

(a) for the words "the Local Board to which it is subordinate as hereinafter provided" the words "the *District Board or Local Board to which the Committee is, for the purposes of this section, subordinate*" shall be substituted, and

(b) for the words "the Local Board" the words "the *aforesaid District Board or Local Board*" shall be substituted.

New sections 46A to 46E.

15. After section 46 of the said Act the following shall be inserted, namely:—

"46A. If at any time it appears to the Lieutenant-Governor that a District Board is unable to make any payment guaranteed under section 82 in respect of a railway or tramway,
Power to impose a rate when District Board has guaranteed interest on capital expended on railway or tramway.

[*Cf. Mad. Act V of 1884, s. 57, cl. (ii), inserted by Mad. Act VI of 1900, s. 47.*]

without effecting such a reduction of its ordinary expenditure as would, in the opinion of the Lieutenant-Governor, prevent the Board from efficiently maintaining the existing communications in the district, or from carrying out any other duty which is imposed on the Board by law or which the Board has undertaken to perform,

the Lieutenant-Governor may, by notification in the Calcutta Gazette, for the purpose of providing the required funds, impose a rate on the annual value of lands as defined in section 4 of the Cess Act, 1880.

[*Cf. Ben. Act IX of 1880, s. 6.*]

Ben. Act IX of 1880.

"46B. The amount of any rate imposed under section 46A for the purpose of making any payment shall be so fixed as to yield no more than the amount required for making that payment, and shall not exceed three pies on every rupee of the annual value of the lands on which the rate is imposed.
Amount of such rate.

"46C. The procedure prescribed by and under the Cess Act, 1880, for the assessment, payment and recovery of such rate, recovery of road cess and public works cess shall, so far as may be, and subject to the provisions of sections 46A and 46B, apply to the assessment, payment and recovery of any rate imposed under section 46A.
Assessment, payment and recovery of such rate.

Ben. Act IX of 1880.

"46D. The proceeds of any rate imposed under section 46A for the purpose of making any payment shall be utilised solely for the purpose of making that payment.
Application of proceeds of such rate.

"46E. Whenever the proceeds of any rate imposed under section 46A are sufficient for making the payment on account of which the rate was imposed, the levy of the rate shall cease."
Cessation of levy of rate when required sum collected.

The Bengal Local Self-Government (Amendment) Bill, 1904.
(Clauses 16-22.)

Addition to section 48.

16. To section 48 of the said Bengal Local Self-Government Act of 1885 the following shall be added, namely:—

Ben. Act III of 1885.

“Explanation.—Alterations or modifications may be made or directed by the Commissioner under this section on any of the grounds mentioned in the penultimate paragraph of section 47.”

Amendment of section 52.

17. (1) For clause (3) of section 52 of the said Act the following shall be substituted, namely:—

“(3) all sums directed by notification under the Cattle-trespass Act, 1871, section 31, to be placed to the credit of the Fund.”

1 of 1871.

(2) After clause (5) of the said section 52 the following shall be inserted, namely:—

“(5a) all receipts accruing within the district from tolls or leases under Part III D (1) of this Act.”

(3) After clause (7) of the same section the following shall be inserted, namely:—

“The proceeds of any rate imposed under section 46A shall be placed to the credit of the District Fund, under a separate head.”

Amendment of section 53.

18 (1) To clause *Fifthly* of section 53 of the said Bengal Local Self-Government Act of 1885 the following shall be added, namely:—

Ben. Act III of 1885.

“and to the payment of any sums assigned by the District Board to a Local Board or a Union Committee under this Act.”

(2) In clause *Sixthly* of the same section, for the words “of the travelling expenses incurred by members of the District Board in attending meetings of the Board or meetings of a Joint Committee” the following shall be substituted, namely:—

“(a) of travelling expenses incurred by delegates of the District Board in attending meetings convened under the rules made by the Lieutenant-Governor in pursuance of sub-section (4) of section 1 of the Indian Councils Act, 1892, for the purpose of recommending a person to be nominated as a member of the Lieutenant-Governor's Council;

[Cf. Ben. Act III of 1884, s. 69 (2).]

55 & 56 Vict., c. 14.

(b) of travelling expenses incurred by members of the District Board in attending meetings of the Board or meetings of a Joint Committee; and

(c) in such cases, if any, as the Lieutenant-Governor may direct, of travelling expenses incurred by members of the District Board or any Local Board in performing journeys for carrying out other objects of this Act.”

Amendment of section 56.

19. For clause (1) of section 56 of the said Bengal Local Self-Government Act of 1885 the following shall be substituted, namely:—

Ben. Act III of 1885.

“(1) all sums directed by notification under the Cattle-trespass Act, 1871, section 31, to be placed to the credit of the Fund.”

1 of 1871.

Amendment of section 59.

20. In section 59 of the said Bengal Local Self-Government Act of 1885, for the letter “D” the letter and figure “D (1)” shall be substituted.

Ben. Act III of 1885.

New section 61.

21. For section 61 of the said Act the following shall be substituted, namely:—

“61. Every District Board shall perform such functions as may be transferred to it by notification under the

Pounds.

Cattle-trespass Act, 1871, section 31.”

1 of 1871.

Addition to section 62.

22. To section 63 of the said Bengal Local Self-Government Act of 1885, the following shall be added, namely:—

Ben. Act III of 1885.

“or may make grants in aid of any such schools, whether the same be under public or private management.”

The Bengal Local Self-Government (Amendment) Bill, 1904.
(Clauses 23-27.)

Addition to section 67.

23. To section 67 of the said Act the following shall be added, namely:—

“A District Board may also provide for—

- (a) the training and employment of medical and veterinary practitioners; and
- (b) the promotion of free vaccination.”

Addition to section 70.

24. To section 70 of the said Act the following shall be added, namely:—

“or defray the expenses of any such inhabitants for journeys to and from any hospital established in any part of British India for the treatment of special diseases.”

Amendment of section 73.

25. In section 73 of the said Act, after the words “for the purposes of this Act” the words and figures “but subject to the provisions of Chapter III of Part III thereof” shall be inserted.

Amendment of section 82.

26. (1) In section 82 of the said Act, for the words “Lieutenant-Governor” the words “Governor General in Council” shall be substituted.

(2) To the same section the following shall be added, namely:—

“Provided that no application for the said sanction shall be made, in the case of a railway or tramway, unless—

- (a) it is authorised by a resolution which has been passed at a meeting specially convened for the purpose and in favour of which a majority of not less than two-thirds of the members of the District Board have voted; and
- (b) such resolution declares the assent of the said majority to the imposition of a rate under section 46A in the circumstances stated in that section.”

[Cf. Mad. Act V of 1884, s. 68, proviso, added by Mad. Act VI of 1900, s. 48.]

New sections 86A to 86L.

27. After section 86 of the said Act the following shall be inserted, namely:—

“D(1) Tolls on Bridges.

“86A. The District Board, with the sanction of the Lieutenant-Governor, may establish a toll-bar

Power of District Board to establish toll-bars and levy tolls on bridges.

[Cf. Ben. Act III of 1884, ss. 153, 159(1).]

on any bridge in the district which was constructed out of the District Fund and the construction of which was completed after the commencement of the Bengal Local Self-Government (Amendment) Act, 1904, or

at any place in the district, adjacent to any such bridge, at which tolls may conveniently be levied,

and may levy tolls at such toll-bar on vehicles and animals passing over such bridge:

Provided as follows:—

(1) no toll-bar shall be established, or tolls levied, otherwise than for the purpose of recovering—

- (a) the expenses incurred in constructing such bridge,
- (b) interest on such expenses, at the rate of four per centum per annum, and
- (c) the capitalised value of the estimated cost of maintaining such bridge, and of renewing it, if it requires periodical renewal;

(2) no toll-bar shall be established, or tolls levied, on or in respect of any bridge the cost or estimated cost of which, as indicated in clauses (a), (b) and (c) of proviso (1), was or is less than five thousand rupees.

“86B. The District Board may grant a lease, for any period not exceeding three years, of any toll-bar established under section 86A of this Act.

Lease of toll-bar.

[Cf. Ben. Act III of 1884, s. 164.]

The Bengal Local Self-Government (Amendment) Bill, 1904.
(Clause 27.)

"86C. (1) The following persons and things shall be exempted from payment of tolls at any toll-bar established under section 86A of this Act, namely:— [Cf. Ben. Act III of 1884, s. 168.]

Exemptions.

- (a) Government stores, and persons in charge thereof;
- (b) police-officers, other public officers travelling on duty, District Board officers so travelling, persons in the custody of any of the officers aforesaid, property belonging to or in the custody of any of the officers aforesaid, and vehicles and animals employed by any of the officers aforesaid for the transport of such property;
- (c) conservancy carts and other vehicles and animals belonging to the District Board, and persons in charge thereof; and
- (d) any other class of persons or things which may be exempted by order of the District Board.

(2) In granting a lease of any toll-bar, the District Board may stipulate that any servants and property of the District Board and any other persons and things shall be exempted from payment of tolls thereat.

"86D. (1) When it has been determined that tolls shall be levied at any toll-bar established under section 86A of this Act, the District Board shall make and publish an order specifying the rates at which the tolls shall be levied. [Cf. Ben. Act III of 1884, s. 160.]

Rates of tolls.

(2) Such rates shall be subject to the sanction of the Commissioner, and may from time to time be varied with the like sanction.

"86E. (1) A table of such tolls, legibly printed or written in the vernacular of the district, shall be hung up in some conspicuous position near every such toll-bar, so as to be easily readable by all persons required to pay the tolls. [Cf. Ben. Act III of 1884, s. 165.]

Table of tolls to be hung up.

(2) In default of compliance with sub-section (1) of this section, the toll-collector, or the lessee of the toll-bar, as the case may be, shall be liable to fine which may extend to fifty rupees, and to a further fine which may extend to ten rupees for each day after the first during which the default continues. [Cf. Ben. Act III of 1884, s. 160.]

"86F. The District Board, or the lessee of any toll-bar, may compound with any person for a certain sum to be paid by such person for himself, or for any vehicles or animals kept by him, in lieu of the rates specified under section 86D of this Act. [Cf. Ben. Act III of 1884, s. 167.]

Power to compound for tolls.

"86G. Any toll-collector or lessee of a toll-bar established under section 86A of this Act may refuse to allow any person to pass through the toll-bar until the proper toll has been paid. [Cf. Ben. Act III of 1884, s. 161.]

Power of toll-collector or lessee in case of refusal to pay toll.

"86H. Whoever, having driven through any such toll-bar any vehicle or animal which is not exempted from payment of toll, refuses to pay the toll, shall be liable to fine which may extend to fifty rupees. [Cf. Ben. Act III of 1884, s. 162.]

Penalty for refusing to pay toll.

"86J. If resistance is offered to any person authorised under this Chapter to collect tolls, any police-officer whom he may call to his aid shall be bound to assist him; and such police-officer shall, for that purpose, have the same powers as he has in the exercise of his ordinary police duties. [Cf. Ben. Act III of 1884, s. 169.]

Police-officers to assist.

"86K. If any person authorised under this Chapter to collect tolls, demands or takes any higher tolls than the tolls authorised under this Chapter, he shall be liable to fine which may extend to fifty rupees, and, in default of payment, to imprisonment for a term which may extend to one month. [Cf. Ben. Act III of 1884, s. 170.]

Penalty for taking unauthorised tolls.

The Bengal Local Self-Government (Amendment) Bill, 1904.
(Clauses 28-32.)

"86L. (1) When a toll-bar has been established and tolls have been levied, under section 86A of this Act, in respect of any bridge, the District Board shall, at the end of each financial year, publish, by causing to be posted up at their office, an abstract account showing—

[Cf. Ben. Act III of 1884, s. 159.]

- (a) the amount of the expenses incurred in constructing the bridge;
- (b) the amount of interest which has accrued due on such expenses;
- (c) the capitalised value of the estimated cost of maintaining the bridge and of renewing it, if it requires periodical renewal; and
- (d) the amount which has been received from the profits of the said toll-bar since its establishment.

(2) As soon as such expenses, interest, and capitalised value have been recovered as aforesaid, such toll-bar shall be removed, and tolls shall no longer be levied on such bridge."

New section 88A.

28. After section 88 of the said Act the following shall be inserted, namely:—

"88A. A District Board may, with the sanction of the Lieutenant-Governor, contribute such annual or other sum as may be agreed upon towards the cost of the construction, repair and maintenance, under the provisions of the Bengal Municipal Act, 1884, of water-works, wells or tanks within the district."

[Cf. Ben. Act III of 1885, s. 69.]

Ben. Act III of 1884.

Amendment of section 100.

29. (1) In section 100 of the said Bengal Local Self-Government Act of 1885, for the words "subject to any rules made by the Lieutenant-Governor" the words "subject to such rules and restrictions as the Lieutenant-Governor may from time to time prescribe" shall be substituted.

Ben. Act III of 1885.

(2) After clause (3) of the same section the following shall be inserted, namely:—

"(3a) establish and maintain veterinary dispensaries for the reception and treatment of horses, cattle and other animals; and charge such fees for the use of such dispensaries as may, from time to time, be approved by the Commissioner;

"(3b) appoint and pay qualified persons to prevent and treat diseases of horses, cattle and other animals;

"(3c) provide for the improvement of the breed of horses, cattle and asses, and for the breeding of mules; and".

Amendment of sections 105 to 107 and 117.

30. (1) In sections 105, 106, 107 and 117 of the said Act, for the words "Local Board", wherever they occur, the words "District Board" shall be substituted.

(2) In the said section 107, after the words "village roads" the words "and bridges" shall be inserted.

Amendment of section 108.

31. In section 108 of the said Act, after the word "roads", in both places in which it occurs, the words "and bridges" shall be inserted.

Amendment of section 109.

32. In section 109 of the said Act, after the words "village roads", where they first occur, the words "and bridges" shall be inserted.

The Bengal Local Self-Government (Amendment) Bill, 1904.
(Clauses 33-37.)

Amendment of section 110.

33. In section 110 of the said Act,—

- (a) for the words "Local Board", in the first and third places in which they occur, the words "District Board" shall be substituted, and
- (b) for the words "Local Board", in the second place in which they occur, the words "District Board or of a Local Board" shall be substituted.

New section 111.

34. For section 111 of the said Act the following shall be substituted, namely :—

"111. Every Union Committee shall perform such functions as may be transferred to it by notification under the Cattle-trespass Act, 1871, section 31."

Pounds. [Cf. Ben. Act III of 1885, s. 111.] I of 1871.

New section 114.

35. For section 114 of the said Bengal Local Self-Government Act of 1885 the following shall be substituted, namely :—

"114. An Union Committee shall, if required to do so by the Magistrate of the district, provide for the registration of births and deaths within the Union, and shall submit such returns thereof as the said Magistrate may direct."

New section 119A.

36. After section 119 of the said Act the following shall be inserted, namely :—

"119A. (1) In the performance or exercise of any duties or powers imposed or conferred upon it by this Act, a Union Committee shall act as the agent of, and shall be subject to the control of, the District Board."

Subordination of Union Committee to District Board or Local Board. [Cf. Ben. Act III of 1885, s. 104.]

(2) Notwithstanding anything in the foregoing provisions of this Act, the District Board may, by order in writing,—

- (a) direct that any specified Union Committee shall cease to perform any of the said duties, except those mentioned in section 114 of this Act, or to exercise any of the said powers, or
- (b) with the previous sanction of the Commissioner, direct that any specified Union Committee shall act as the agent of, and shall be subject to the control of, a Local Board, instead of the District Board, either for all purposes or for the purposes specified in the order.

(3) Any order made under sub-section (2) of this section may be revoked by the District Board by which it was made :

Provided that no order made under clause (b) shall be revoked except with the previous sanction of the Commissioner.

(4) So long as an order made under clause (a) of this section with respect to any Union Committee continues in force, the duties and powers to which it relates shall be performed and exercised by the District Board or Local Board instead of by that Committee.

(5) So long as an order made under clause (b) of this section with respect to any Local Board continues in force, the references to the District Board in the foregoing sections of this Chapter shall, so far as may be necessary, be read as if made to such Local Board."

Amendment of section 130.

37. (1) In the first paragraph of section 130 of the said Act, for the words "by the Local Board" the words "by the District Board or Local Board to which the Committee is, for the purposes of this section, subordinate" shall be substituted.

(2) In the third paragraph of the same section, after the words "Local Board" the words "or Union Committee" shall be inserted.

The Bengal Local Self-Government (Amendment) Bill, 1904.
(Clauses 38-42.)

New section 133.

38. For sections 133 and 134 of the said Act the following shall be substituted, namely:—

“133. (1) If a dispute arises between two or more Union Committees which are, for the purposes of this section, subordinate to the same District Board or Local Board, the matter shall be referred to such Board, and the decision of the Board thereon shall be final and binding.

(2) If a dispute arises between two or more Union Committees within the same district, and such Committees are not all, for the purposes of this section, subordinate to the same Local Board, the matter shall be referred to the District Board, and the decision of the District Board thereon shall be final and binding.”

Amendment of section 138.

39 (1) To clause (a) of section 138 of the said Act the following shall be added, namely:—

“and determining the authority who shall decide disputes relating to such elections.”

[Cf. Ben. Act III of 1884, s. 16.]

(2) To clause (g) of the same section the following shall be added, namely:—

“and declaring what circumstances shall be a disqualification for continuance of employment under that section.”

(3) To clause (k) of the same section the following shall be added, namely:—

“the training and employment of medical and veterinary practitioners, and the promotion of free vaccination.”

(4) After clause (l) of the same section the following shall be inserted, namely:—

“(ll) prescribing, for the purposes of section 86A of this Act, the mode of ascertaining the capitalised value of the estimated cost of maintaining bridges, and of renewing any bridge which requires periodical renewal, and the mode of determining what class of bridges requires periodical renewal”

(5) In clause (p) of the same section, after the word “animals” the following shall be inserted, namely:—

“the establishment and maintenance of veterinary dispensaries, the appointment and payment of qualified persons to prevent and treat diseases of horses, cattle and other animals, the improvement of the breed of horses, cattle and asses, the breeding of mules”.

Amendment of section 142.

40. In section 142 of the said Act, before the words “or Union Committee” the words “Local Board” shall be inserted.

Addition to section 144.

41. To section 144 of the said Act the following shall be added, namely:—

“Nothing in this section shall apply to the payment of fees to a vakil or pleader for services rendered by him in his professional capacity.”

Amendment of Schedule III.

42. In the heading to the third Schedule to the said Act, for the words “Districts in every sub-division of which a Local Board shall be established” the words “Districts in which the elective system is in force for the nomination of members of the Local Board” shall be substituted.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to make various amendments in the Bengal Local Self-Government Act, III of 1885, for the following purposes, namely :—

- (1) to give legal authority to the practice now already in existence under which District Boards incur expenditure on veterinary objects;
- (2) to impose tolls on newly-constructed bridges until the initial cost and the capitalised value of the cost of maintenance and renewal have been recovered;
- (3) to give power to levy a rate to enable District Boards to pay sums guaranteed by them by way of interest on capital expended on railways or tramways; and
- (4) to remove certain flaws and omissions in the Act which experience of its working has brought to light.

The amendments are explained in detail in the following notes.

NOTES ON CLAUSES.

Clause 2 repeals—

- (1) the words “or of the Districts of Singhbhum, the Sonthal Parganas, or the Chittagong Hill-tracts” in section 1. This repeal is required partly because one of these Districts (Singhbhum) is now considered to be sufficiently advanced to be admitted to the benefits of Local Self-Government, and partly because the specific exception in the case of the Sonthal Parganas and the Chittagong Hill-tracts is now unnecessary, having been superseded by Regulation III of 1872, section 3 (as amended by Regulation III of 1899, section 3), in the case of the former, and by Regulation I of 1900, section 4, in the case of the latter district;
- (2) the proviso in section 6. The first portion of this proviso is entered for repeal in order to permit of the abolition of Sadar Local Boards, which experience has proved to be unnecessary and which have already been abolished in some districts in which the proviso does not stand in the way. The rest of the proviso assumes that a Union Committee cannot exist except where a Local Board has been created. This principle has been proved to be inconvenient and difficult of working. It is, therefore, proposed, by later clauses of the Bill, to subordinate Union Committees primarily to the District Board instead of the Local Board;
- (3) section 16, its provisions being embodied in a new section 19A;
- (4) section 24, its provisions being reproduced in amended form in a new section 29A;
- (5) the last paragraph of section 25, its provisions being embodied in a modified form in the new section 29A;
- (6) section 34, its provisions becoming unnecessary in view of the amendments made in section 32(g);
- (7) section 72. The repeal of this section is necessary, as it will be superseded by the new section 114 which appears in clause 35 of the Bill. Section 114 as it now stands in the Act, requires every Union Committee to provide for the registration of births and deaths, and to submit such returns as the Local Board may direct. But the registration of births and deaths is not, and never has been, under the Local Board, and it is not now contemplated that a Local Board, even if it possessed this power, should exercise, except by delegation, control over Union Committees. In point of fact the registration of vital statistics is carried out by the police under the control of the Magistrate, and there is no intention of transferring this work to District or Local Boards. In the few rural areas (the colliery tracts of Burdwan and a portion of the Darjeeling district) in which Bengal Act IV of 1873 (which provides for the compulsory registration of births and deaths) has been brought into force, the District Magistrate, and not the District or Local Board, is and will continue to be the controlling authority. For these reasons it is proposed to alter section 114 so as to provide that a Union Committee shall register births and deaths only if required to do so by the District Magistrate;
- (8) the proviso to section 73. This proviso is rendered unnecessary by the amendment made in section 108 by clause 31 of the Bill;
- (9) the words in section 103 “A Local Board shall exercise powers of supervision and control over all Union Committees within the area under its authority, and” } These repeals are proposed as part of the policy of subordinating Union Committees to District Boards rather than to Local Boards.
- (10) section 104.

2. Clause 3 amends section 10 of the Act, in order to provide for cases in which the members of a Local Board make default in electing representatives on the District Board, there being at present no legal means for dealing with such cases.

3. *Clause 4* introduces a new section 19 with the object of covering similar defects in bye-elections, and a new section 19A, which reproduces the provisions of the existing section 10 and the latter portion of the existing section 19 as to duration of a member's term of office. The references in section 19A to sections 17 and 18 (as to resignation and removal) are new, but are obviously required.

4. *Clause 5* amends section 22 so as to permit the election of Chairmen of District Boards by official designation in the case of districts in which the election of Chairmen is authorised.

5. *Clause 6* introduces a new section 23A to provide for cases of default in the election of a Chairman or Vice-Chairman of a District Board, the Lieutenant-Governor being empowered to intervene to fill the vacancy by making an appointment.

6. *Clause 7* amends section 25 of the Act so as to permit the election of Chairmen of Local Boards by official designation. The absence of such a provision gives rise to frequent difficulties in cases where the Chairman is the Sub-divisional Officer, when it often happens that his transfer or absence on short leave occasions an interregnum, prolonged by the almost inevitable delay on the part of the Board in carrying out the necessary formalities for appointing a successor or substitute.

7. *Clause 8* amends section 26 so as to provide for cases of default in the election of a Vice-Chairman of a Local Board, the Lieutenant-Governor being empowered to intervene to fill the vacancy by making an appointment.

8. *Clause 8* also introduces a new section 26A to authorise the grant of leave to Chairmen and Vice-Chairmen of District and Local Boards.

9. *Clause 9* makes consequential amendments in section 29 of the Act, by providing for the filling of casual vacancies caused by the grant of leave.

10. *Clause 9* further introduces a new section, 29A, which reproduces the provisions of sections 24, 25 (last paragraph), 26 (second paragraph), and 29 (third paragraph) of the existing Act, as to a Chairman's and Vice-Chairman's term of office, with the addition of a sub-section as to the term of office of a Chairman or Vice-Chairman acting for another who is on leave.

11. *Clause 10* amends section 32, clause (g), mainly in order to remove an inconsistency between its provisions and those of section 34. The latter section, which it is now proposed to repeal, authorises the framing of leave rules for officers of District Boards, with the approval of the Commissioner, while under section 32 rules for the same object are subject to the sanction of the Lieutenant-Governor. In practice the latter is the procedure adopted, and the addition of the words "leave allowances" to section 32 (g) is the sole amendment of that section which is required in consequence of the repeal of section 34.

The words "punishment (including suspension and removal)" are substituted for the words "suspension and removal" in section 32, clause (g), in order to enlarge the scope of the section by legalising the imposition of penalties for minor offences or breaches of discipline.

12. *Clause 11* introduces a new section authorising District Boards to make rules for the creation and management of a Provident or Annuity Fund. The adoption of the system of Provident Funds for employes of District Boards was approved in principle by the Government of India, while at the same time the absence of a specific provision of law authorising the creation of such Funds was pointed out. On the introduction of the system, District Boards were instructed to act on the assumption that power would be taken at the first opportunity to give legal effect to it, and it is with this object that the enactment of clause 11 of the Bill is now proposed.

13. *Clause 12* makes certain amendments in section 36 in pursuance of the policy of subordinating Union Committees to District Boards rather than to Local Boards.

14. *Clause 13* provides for the election of a Chairman of a Union Committee, for which there is at present no provision of law.

15. *Clause 14* makes certain amendments in section 44 in pursuance of the policy of subordinating Union Committees to District Boards rather than to Local Boards.

16. *Clause 15* introduces new sections, 46A to 46E, as to the levy of a rate to enable District Boards to pay sums guaranteed by them by way of interest on capital expended on railways or tramways, and clause 26 (2) introduces a proviso to section 82 to declare the procedure to be followed by District Boards before giving such guarantees. The Government of India have attached great importance to the introduction of District Boards into the field of railway enterprise. They have pointed out that there are many places in Bengal where light railways would prove of great service to local trade, and that District Boards would be the appropriate agency to further the development of the country by aiding the construction of such lines. Under existing conditions, however, there seems to be little hope of the assistance of District Boards being forthcoming in Bengal, as it is improbable that many District Boards would at any time have a sufficient surplus of income to enable them to embark on projects of the kind. In these circumstances, it was suggested that District Boards should be empowered to impose a special cess, to be utilised for the purpose of railway construction; and that section 57 (ii) and the proviso to section 58 of the Madras

Local Boards Act, 1884, should be adapted so as to secure that the power to impose an additional tax should be purely permissive, and that it would rest with the District Board alone to take action. Clauses 15 and 26 (2) have been inserted in the Bill to give a modified effect to these views. The functions of District Boards in Bengal will continue in practice to be confined to the guaranteeing of interest on capital raised by outside enterprise, and are not likely to be extended to the investment of the Board's own capital in works of construction.

17. *Clause 16* adds an *Explanation* to section 48 with the object of making it clear that the Commissioner, in dealing with estimates framed by District Boards, is to have the same powers as the District Magistrate, as defined in section 47. The absence of an express declaration to this effect has given rise to practical difficulties.

18. *Clause 17 (1)* amends section 52 (3) in order to bring it into closer accordance with the law as now contained in Act I of 1871, section 31, as amended by Act I of 1891.

19. *Clause 17 (2)* introduces an additional clause into section 52, which is necessitated by the new provisions [sections 86A. *et seq.*] relating to tolls on bridges.

20. *Clause 17 (3)* introduces an additional clause in section 52, which is necessitated by the new provisions [sections 46A. *et seq.*] relating to the levy of a rate for payment of interest on capital expended on railways or tramways.

21. *Clause 18 (1)* makes an addition to section 53, clause *Fifthly*, with the object of legalising the payment from the District Fund of sums assigned by the District Board to a Local Board or Union Committee. The power to make such payments, though contemplated throughout the Act, is nowhere clearly given by the Act as it now stands.

22. *Clause 18 (2)* amends section 53, clause *Sixthly* with the objects of (1) extending to delegates of District Boards the concession granted by section 69 (2) of the Bengal Municipal Act, III of 1884, to Municipal Commissioners, as to travelling expenses for attending meetings in connection with the election of members for the Bengal Legislative Council; and (2) legalising the payment from the District Fund of travelling allowances to members of District Boards and Local Boards in performing journeys for carrying out any of the objects of the Act.

23. *Clause 19* amends section 56 (1) with the object explained in paragraph 18, *ante*.

24. *Clause 20* is necessitated by the additions made by clause 27.

25. *Clause 21* amends section 61 with the object explained in paragraph 18, *ante*.

26. *Clause 22* makes an addition to section 63, in order to legalise the grant from the District Fund of contributions in aid of secondary schools in cases where they are not under the direct control of the District Board. It might have been supposed that the power already conferred by section 63 of undertaking the maintenance and management of schools under public management includes the minor power of assisting them with funds, but this view has been overruled. It is therefore contemplated to remedy the deficiency in the manner shown in this clause, and also to provide for the furtherance of education by taking power to authorise similar contributions to schools under private management.

27. *Clause 23* makes an addition to section 67 with the object of empowering District Boards to devote a portion of their funds to the training and employment of medical practitioners. The practice has for some time existed in Bengal, and the occasion of the amendment of the Act is taken to give it the authority of law.

28. The same provision is extended to the case of veterinary practitioners. Some time ago, when the Civil Veterinary Department in Bengal was in process of formation, District Boards were invited to co-operate, and were asked in particular to what extent they were prepared to utilise the services of passed Veterinary Assistants. It then came to notice that doubts prevailed whether, under section 100 of the Bengal Local Self-Government Act, District Boards were legally competent to contribute to veterinary measures, and it was further found that many of these bodies were disposed to rely on this legal difficulty as an excuse for declining to spend money in the manner suggested. The difficulty was reported to the Government of India, and that Government requested that, if there were any doubt whether local bodies, and especially District Boards, could legally contribute towards the maintenance of veterinary projects, the law might be amended in order to enable them to do so. The necessary additions have therefore been made to section 67 of the Act.

29. *Clause 23* also contains a provision empowering District Boards to spend money on the promotion of free vaccination. Though the licensed system of vaccination is generally in force throughout Bengal, occasions at times arise on which District Boards find it necessary to employ paid vaccinators, subject to the supervision of the Civil Surgeon (who is the Superintendent of Vaccination in all districts), to operate free of charge. The law as it stands does not expressly authorise this procedure, but the difficulty is surmounted in practice by the expedient of permitting District Boards to devote funds to this object under the head "Medical." The necessary legal powers will be attained by sub-clause (b) of the proposed addition to section 67.

30. *Clause 24* has been inserted with the object of extending to servants of District Boards the concessions granted by the Government of India as to the treatment of Government servants at the Pasteur Institute at Kasauli.

31. *Clause 25* amends section 73 in order to prevent conflict between that section and sections 108 *et seq.* of the Act.

32. *Clause 26 (1)* makes an amendment in section 82 of the Act. By that section the Local Government is empowered to permit District Boards to guarantee the payment of interest on capital expended on works of communication. But the Government of India have directed that, in view of the possibility of the liability for the fulfilment of such guarantees being ultimately shifted to Imperial revenues, guarantees should not be given without the previous sanction of the Government of India; and consequently all guarantees of the kind that may be given must, in existing circumstances, be regarded as subject to the sanction of the Governor General in Council. In view, however, of the importance of this requirement, the Government of India have expressed a desire that it should be placed on a statutory basis. The words "Lieutenant-Governor," in section 82 of the Act, have accordingly been replaced by the words "Governor General in Council."

33. *Clause 26 (2)* adds a proviso to section 82 as part of the new scheme of taxation which is explained in paragraph 16, *ante*.

34. *Clause 27* introduces a series of new sections, numbered 86A to 86L, to authorise District Boards to impose tolls on newly-constructed bridges until the initial cost and the capitalised value of the cost of maintenance and renewal have been recovered. The principle is no new one in Bengal, being already embodied in the Bengal Municipal Act, III of 1884. The provisions contained in clause 27 of the Bill are in the main reproduced from sections 158 to 170 of the Municipal Act, with the omission of matter relating to tolls on roads. The following points may be noticed in connection with the proposed new sections.

35. *Section 86A*.—This has been drafted so as to confine the power of taking tolls to the case of bridges constructed out of the District Fund and completed after the commencement of the new law.

36. The rate of interest is in proviso (b) to section 86A put at 4 *per cent.* instead of, as in the Municipal Act, 6 *per cent.* The latter Act reproduced a rate of interest in force more than 20 years ago.

37. *Proviso (2)* will prevent the levy of tolls on any but large bridges. It is estimated that the minimum cost of a bridge over a river requiring a ferry throughout the year is Rs. 5,000, and this limit is tentatively taken in the Bill.

38. *Section 86C* reproduces the provisions of section 168 of the Bengal Municipal Act, 1884, except the portions which were repealed by the Indian Tolls (Army) Act, II of 1901. The exemptions from toll which are enacted by the latter Act will of course continue after the passing of the present Bill.

39. *Section 86H*.—Section 162 of the Bengal Municipal Act, 1884, declares that whoever, with intent to evade payment of toll, fraudulently avoids passing through a toll-gate shall be liable to fine. Such a provision may be suitable in a municipality and in the case of a toll-bar on a road (though its utility has not been tested), but it is liable to abuse in the mufassal, and can hardly be necessary when the toll-bar is on a bridge over an unfordable river. The section has therefore not been reproduced in the Bill.

40. Section 163 of the Bengal Municipal Act, 1884, provides that in case of non-payment of toll the vehicle or animal or any part of its burden may be seized and sold. This section is possible in a town, but would be very dangerous in the mufassal, where it would be difficult to supervise the action of the toll-bar-keeper. The section has therefore not been reproduced in the Bill. It is believed that sections 86G, 86H and 86J, in the Bill, will be sufficient to secure the due payment of tolls.

41. *Clause 28* introduces a new section, 88A, with the object of legalising contributions from the District Fund towards the improvement of the water-supply of municipalities situated within the district. The legality of such an allocation of District Funds formed the subject of a discussion in 1893, when a contribution was made for this purpose by the Shahabad District Board to the Municipality of Arrah. The Legal Remembrancer of the day decided in its favour, but it seemed that such an interpretation of section 88 might at any time be called in question, in view of the declaration in section I that the Act shall not extend to any place or town to which the provisions of the Bengal Municipal Act 1884, have been extended. The object is clearly one to which a portion of the District Fund may very properly be diverted, seeing that a pure water-supply in a municipality is an advantage to the district in general. Section 88A has accordingly been framed with a view to preventing any dispute on the point, the contributions being made subject to the approval of the Lieutenant-Governor.

42. *Clause (2)* introduces new sub-clauses 3(a), 3(b) and 3(c) in section 100, in order to legalise expenditure incurred by District Boards for veterinary purposes. This matter is explained in paragraph 28, *ante*.

43. *Clause 30 (1)* amends sections 105, 106, 107 and 117 with the object of subordinating Union Committees primarily to the District Board instead of the Local Board.

44. *Clauses 30 (2), 31 and 32* make certain additions to sections 107, 108 and 109 with the object of authorising Union Committees to undertake, where necessary, and subject to the provision of the new section 119A, the construction, maintenance and repair of bridges situated within the Union.

45. *Clause 33* amends section 110 with the object stated in paragraph 43, *ante*.
46. *Clause 34* amends section 111 with the object stated in paragraph 18, *ante*.
47. *Clause 35* amends section 114, and provides that a Union Committee shall register births and deaths only if required to do so by the District Magistrate, who will continue to be the controlling authority—see paragraph 1 (7), *ante*.
48. *Clauses 36, 37 and 38* introduce amendments with the object stated in paragraph 43, *ante*.
49. *Clause 39* extends the rule-making power conferred by section 138 (a), so as to enable the Lieutenant-Governor to determine the authority who shall decide disputes concerning elections. The precedent followed in this case is that of section 15 of the Bengal Municipal Act, 1884, as amended by Bengal Act IV of 1894.
50. An extension of the power of the Local Government to make rules is also proposed in the same clause to enable the Government to declare what circumstances shall be a disqualification for continuance of employment under section 33. Rules have recently been issued by the Government for regulating the retirement, under certain conditions, of District Engineers and other employes of District Boards on attaining the age of 55 years. The existing Act contains no definite authorisation of such rules, and it is desirable to give them at the earliest opportunity a strictly legal basis. The clause is expressed in general terms in order that it may cover disqualifications, other than that of age—indebtedness, for example—the rules on which subject do not definitely apply under the existing provisions of the law to officers paid from Local Funds.
51. Further extensions of the power of the Local Government to make rules are proposed so as to admit of the making of rules to regulate the training and employment of medical and veterinary practitioners, the promotion of free vaccination and the establishment and maintenance of veterinary dispensaries, and to prescribe the mode of ascertaining the capitalised value of the estimated cost of maintaining and renewing bridges.
52. *Clause 40* amends section 142 so as to remedy a verbal omission.
53. *Clause 41* is proposed in order to exclude pleaders, who are professionally engaged by a District Board of which they are members, from the operation of section 144 of the Act.
54. *Clause 42* amends the heading to Schedule III in consonance with the proposal to take power to abolish Sadar Local Boards, and brings it into accordance with the provisions of section 9 of the Act.

L. P. SHIRRES.

The 26th March, 1904.

CALCUTTA;

The 28th March, 1904.

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F. G. WIGLEY,

Secretary to the Bengal Council.



The Calcutta Gazette.

WEDNESDAY, FEBRUARY 10, 1904.

PART IVA.

Proceedings of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

*Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal,
assembled under the provisions of the Indian Councils Acts, 1861 and 1892.*

The Council met in the Council Chamber on Tuesday, the 2nd February, 1904.

Present:

The Hon'ble SIR ANDREW FRASER, K.C.S.I., Lieutenant-Governor of Bengal, *presiding*.

The Hon'ble MR. C. E. BUCKLAND, C.I.E.

The Hon'ble MR. L. HARE, C.I.E.

The Hon'ble MR. B. L. GUPTA.

The Hon'ble MR. J. T. WOODROFFE, *Advocate-General of Bengal*.

The Hon'ble MR. W. C. MACPHERSON, C.S.I.

The Hon'ble MR. D. B. HORN.

The Hon'ble MR. L. P. SHIRRES.

The Hon'ble MR. A. EARLE.

The Hon'ble MR. R. T. GREER, C.S.I.

The Hon'ble MR. T. K. GHOSE.

The Hon'ble MR. H. ELWORTHY.

The Hon'ble RAI TARINI PERSHAD, BAHADUR.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, M.A., D.L., F.R.A.S., F.R.S.E.

The Hon'ble BABU BHUPENDRA NATH BASU, M.A., B.L.

The Hon'ble BABU SALIGRAM SINGH.

NEW MEMBER.

The Hon'ble MR. D. B. HORN took his seat in Council.

CHANGE IN THE ORDER OF BUSINESS.

The Hon'ble THE PRESIDENT said:—"I propose to suspend the Rules of Business to this extent that the Legislative Business will be taken first, for the convenience of Hon'ble Members for whom this hour of the morning is inconvenient to meet."

THE BENGAL PUBLIC PARKS BILL.

The Hon'ble MR. BUCKLAND presented the Report of the Select Committee on the Bill for the regulation of Public Parks in Bengal.

THE BENGAL SETTLED ESTATES BILL.

The Hon'ble MR. BUCKLAND also presented the Report of the Select Committee on the Bill to facilitate the family settlement of estates in Bengal.

THE BENGAL TRAMWAYS (AMENDMENT) BILL.

The Hon'ble MR. SHIRRES moved that the Bill to amend the Bengal Tramways Act, 1883, be taken into consideration at the next meeting of the Council.

The Motion was put and agreed to

RULES FOR THE CONDUCT OF LEGISLATIVE BUSINESS.

The Hon'ble MR. MACPHERSON moved that a Select Committee, consisting of the Hon'ble Mr. Woodroffe, the Hon'ble Dr. Asutosh Mukhopadhyaya and the Mover, be appointed to consider certain amendments which have been suggested in the Rules for the conduct of the Legislative Business of the Council. He said:—

"The Rules of Business of the Council are made by the Lieutenant-Governor in Council under the provisions of section 48 of the Indian Councils' Act of 1861.

"Our rules were last revised 14 years ago in the year 1890 when the Hon'ble Sir Steuart Bayley was President of the Council; and the revision was made at the President's instance. Revision of some of the rules is now proposed at your Honour's instance in order to expedite and improve the work of the Council. The amendments proposed are explained in a note which has been laid on the table.

"Briefly, the first object of the proposed amendments is to save unnecessary delay and formalities in the early stages of introduction of Bills and reference of them to Select Committees. It has been of common occurrence, as the volumes of Proceedings of the Council will show, to suspend the Rules in order to expedite business at these stages and to save Hon'ble Members the trouble of attendance at merely formal sittings. But frequent suspensions of Rules are open to obvious objection; and when a rule is found to be unsuitable the better course seems to be, not to suspend it frequently, but to amend it. The amendments proposed under this head, if approved, will assimilate the practice of the Council in dealing with Bills in their early stages to that of the Governor General's Council.

"The second object proposed is to amend the rule which requires all Bills to be published not only in English but also in the Vernaculars. The rule in the Governor General's Council is that such publication shall be made in the vernacular as the Council in each case may decide to be necessary for the purpose of giving notice to the communities affected by the Bill. It is proposed to adopt this rule for our Council. The other amendments proposed are formal and do not require any remarks from me.

"The rules might perhaps be amended with advantage in particulars other than those proposed in the note which has been laid on the table. But the present intention is to meet practical difficulties which have actually arisen; and unless any really important proposals be brought forward in Committee for further amendments than those set out in the Explanatory Note, it would be an advantage to save technical discussions and to confine the present work of revision within limits.

"It will be in accordance with the precedent of the last occasion on which the rules were revised that a Select Committee should be appointed to consider the amendments proposed, and I accordingly submit to the Council the motion which stands in my name."

The Hon'ble MR. WOODROFFE said:—"There is one matter to which the Hon'ble Member has not alluded, but which I think would come within the principles to which he has referred, and that is the insertion of a rule providing for the re-commitment of Bills to a Select Committee when necessary to do so, and that such re-commitment might be either general, or limited to particular matters in accordance with the rules which are to be found on this subject in May's Parliamentary Practice."

The Hon'ble MR. MACPHERSON said:—"The Hon'ble Advocate-General's suggestion is covered by one of the amendments proposed."

The Motion was then put and agreed to.

QUESTIONS AND ANSWERS.

EXTRA PLATFORM AT SHAIKPURA STATION.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, said:—

(1) I have the honour to lay before Government the following for its favourable consideration:—

- (a) that Shaikpura, in the district of Monghyr, Bhagalpur Division, is an important place, having a Railway Station (South Behar Railway); and not only the town of Shaikpura, but also Hosainabad and other adjoining places, are important owing to very many respectable and rich Muhammadan families having family residences there from time immemorial;
- (b) that it is a well-known fact that the *purdah* system of the females, in Muhammadan as well as in Hindu respectable families, is strictly observed and maintained;
- (c) that the Shaikpura Railway Station has a platform on only one side of the line and not on the other,
- (d) that for want of a platform on one side of the line the females (*purdah* ladies) feel great difficulty and are inconvenienced by getting into, and coming out of, the railway carriages on that side of the line;
- (e) that for want of a platform on one side of the line the *purdah* ladies of respectable families have to go, in *palkees* and otherwise, long distances to catch the trains at the stations which are provided with platforms on both sides of the line, thereby entailing unnecessary expense and trouble to them.

(2) Will the Government be pleased to draw the attention of the Railway Authorities to the importance of the necessity of supplying the want, by keeping a platform on each side of the line?

The Hon'ble MR. HORN replied:—

"The Railway Authorities have already had under consideration the provision of a second raised platform at Shaikpura station on the South Behar Railway, but have been unavoidably forced to defer it owing to the heavy expenditure already incurred on the construction of the line and the poor returns received from it. They are desirous of providing every convenience for the travelling public, and with this end in view trains are dealt with, as far as possible, on that side of the line on which the raised platform is situated. In the circumstances no further expenditure can, in the interests of the shareholders of the Company, be incurred under present conditions in supplying extra platform accommodation at Shaikpura station."

THE DEOGHUR SUB-DIVISION.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, said:—

I beg to draw the attention of Government to the fact that the Deoghur Sub-division, amongst other sub-divisions of the district of the Sonthal Parganas, is far advanced in education, manners, customs, habits of life and business, and that the number of the Sonthals, compared with the number of Non-Sonthals, living in that sub-division, is very small; whereas it is very different in other sub-divisions of that district.

(a) Will the Government be pleased to place on the table a statement from the last Census, showing the Sonthal and Deckoo (other than Sonthals) populations separately, living in the following sub-divisions of the district of the Sonthal Parganas:—

- | | |
|---------------|------------|
| (1) Deoghur. | (4) Dumka. |
| (2) Jamtara. | (5) Godda. |
| (3) Rajmahal. | (6) Pakur? |

(b) Will the Government be pleased to consider and to state whether the Deoghur Sub-division, in its present condition, specially since the opening of the railway lines and from other points of view, should or should not be brought under the category of places enjoying the boon of the operation of laws and regulations in force there; no additional expenditure by Government being rendered necessary by the change, and the officers now employed in that sub-division being allowed to act as officers administering laws and regulations in regulation districts, and subject to such other condition or conditions or changes as may be deemed fit and desirable?

The Hon'ble MR. MACPHERSON replied:—

“(a) The statement asked for is placed on the table.

“(b) The present would be a very inopportune time to make any change in the system of administration of the Deoghur Sub-division, as the sub-division is now under settlement. Nor is the Lieutenant-Governor of opinion that any case exists for making the change indicated by the Hon'ble Member. He is not prepared therefore to take up the question.”

Statement showing Sonthal and Non-Sonthal population of each Sub-division of the Sonthal Parganas district.

(1) Sub-division.	(2) Sonthals.	(3) Others.
Deoghur	37,043	260,360
Jamtara	73,203	116,596
Rajmahal	110,202	166,501
Dumka	186,408	230,453
Godda	132,383	257,940
Pakur	126,232	112,416

GRIEVANCES OF SONTHALS OF THE SERAIKHELA STATE.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, said:—

I beg to draw the attention of the Government to an article in the *Amrita Bazar Patrika* of the 12th December last, in its 4th column, page 5, complaining of the conduct of some Raj and British officials towards a number of Sonthals in “Seraikhela,” a tributary State in Chota Nagpur, about 10 miles from Chaibassa, the principal town of Singhbhum.

(a) Is it a fact that a memorial has been submitted by the Sonthals to the Government representing their grievances and seeking redress?

(b) If it has, will the Government be pleased to state whether an inquiry has been ordered?

(c) If the complaint be well founded, will the Government be pleased to take serious notice of the conduct complained of to prevent a recurrence of similar instances of oppression upon the poor *semi-barbaric* Sonthals?

The Hon'ble MR. MACPHERSON replied:—

"It is not a fact that a memorial from a number of Sonthals of the Seraikhela State representing their grievances and seeking redress has been addressed to Government. A memorial from a proclaimed offender of the Seraikhela State, named Debi Sonthal, who is absconding from a criminal charge, was received by Government last month. His counsel, who submitted the memorial, has been informed that when he surrenders himself for trial, his grievances, if any, will be duly inquired into, but that Government cannot consider a memorial from a fugitive from justice."

SUB-DEPUTY COLLECTORS AND THE PENSION RULES.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, said:—

I beg to draw the attention of Government to a question asked by me relating to the existing rules as to whether service in the grades of Sub-Deputy Collectors, before confirmation, does or does not count for pension, as well as the answer of the Hon'ble Mr. Hare, which was to the effect that "under the existing rules such service did not count for pension, and that the subject was under the consideration of this Government," *vide* Abstract of the Council Proceedings, dated the 4th April last, page 102; and to request the favour of being informed of its decision, if any has since been arrived at?

The Hon'ble MR. MACPHERSON replied:—

"The question of reckoning service in the grades of Sub-Deputy Collectors prior to confirmation towards pension has been referred for the decision of the Government of India, and the orders of that Government are awaited."

SALE OF COPIES OF ENACTMENTS AND NOTIFICATIONS, ORDERS, ETC., RELATING TO THE SONTHAL PARGANAS.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, said:—

(a) I beg to draw the attention of Government to the following facts:—

- (i) that there are many important Government letters and notifications laying down general principles of administration in the Sonthal Parganas, which are and have to be frequently referred to in Courts of that district;
- (ii) that copies of such letters and notifications, as well as copies of the Sonthal Civil Rules and the Regulations specially passed for that district are, as is understood, not sold to the public. These are Act XXXVII of 1855, Act X of 1857, Act V of 1859, Regulation III of 1872, Regulation II of 1886, Regulation III of 1886, Regulation V of 1893, and the Sonthal Parganas Rural Police Regulation, III of 1900, and the Sonthal Civil Rules lastly framed and passed in 1901;
- (iii) that for the above reasons the suitors generally and the legal practitioners, when authorised to act for them, are put to much inconvenience and difficulty.

(b) Will the Government be pleased to state whether it is open to the public to publish and sell the Government letters, notifications, Regulations, Acts and Civil Rules referred to above? If not, will the Government be pleased to consider the advisability of allowing publication of the same to be made on behalf of itself for sale to the public, and inform the Council of its decision in the matter?

The Hon'ble MR. MACPHERSON replied:—

"The special Acts and Regulations in force in the Sonthal Parganas are sold to the public separately, in Volume I of the Bengal Code and in the

'Reprint of Laws and of selected Notifications, Orders and Rules specially in force in the Sonthal Parganas,' which was published from the Bengal Secretariat Press in 1898.

"The former Rules of Civil Procedure in the Sonthal Parganas were published in the reprint of 1898 just named. The rules were revised in the year 1901, when a copy was given to each petition-writer in the district. The rules of 1901 are now again under revision.

"Notifications of Government are published in the Calcutta Gazette. Many of the Notifications relating to the Sonthal Parganas are contained in the reprint.

"Copies of letters issued by Government are not ordinarily sold to the public, but certain letters issued by Government have been included in the reprint; and the policy laid down in other letters has long since been incorporated in the rulings of the Courts which are available to the public. The stock of copies of the reprint of 1898 has been exhausted, and a new and revised edition will be published hereafter, probably after the completion of pending settlement operations.

"There is no objection to private publication of Rulings, Acts, Regulations, Notifications and Rules relating to the Sonthal Parganas. The Government publications would, however, have more authority."

THE PROVINCIAL AND SUBORDINATE EDUCATIONAL SERVICES.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, said :—

In answer to a question asked by the Hon'ble Maulvi Seraj-ul-Islam, Khan Bahadur, on the 28th March, 1903, about the improvement of the prospects of the officers of the Provincial Educational Service, Government was pleased to answer :—

"The matter has lately come up again, and the question whether it is practicable to improve the prospects of the Provincial and Subordinate Educational Services is at the present time under the consideration of the Lieutenant-Governor."

Will the Government be pleased to state whether it has come to any conclusion in regard to this matter, and if so, what?

The Hon'ble MR. EARLE replied :—

"The question of improving the prospects of the Provincial and Subordinate Educational Services has been referred by the Lieutenant-Governor to the Government of India, and is, at the present time, under the consideration of that Government. It is inexpedient at this time to make any statement regarding the views of this Government on the subject."

WEARING OF SHOES IN THE DOCK.

The Hon'ble BABU BHUPENDRA NATH BASU asked :—

(1) Has the attention of the Government been drawn to an editorial paragraph published in the *Amrita Bazar Patrika* of the 19th December last, alluding to an order issued by the District Magistrate of Hooghly to the effect that no accused person should be allowed to enter the dock with shoes on, and noticing a case in which a gentleman belonging to an aristocratic family in Calcutta, who was involved in a fishery case, was compelled, in spite of his protest, to put off his shoes before he got into the dock?

(2) Considering that it is neither the policy of the Government nor the intention of law that law-abiding and respectable people, who have the misfortune to be involved in criminal cases, should be put to unnecessary indignities such as the order of the District Magistrate of Hooghly seeks to impose upon all accused persons, irrespective of their social position and of the nature of their offence, will the Government be pleased to direct the withdrawal or modification of the order so as to allay the alarm which the order has created among the people of Hooghly?

The Hon'ble MR. MACPHERSON replied :—

"The Lieutenant-Governor has seen the paragraph in the *Anrita Bazar Patrika* of the 19th December last, to which attention is drawn, and has made inquiries of the District Magistrate of Hooghly.

"It appears that the salutary provision of Rule 14, Chapter XV, of the Police Code, regarding the searching of prisoners so as to be satisfied that no offensive weapons are carried into Court, and that prisoners do not enter the precincts of the Court with their shoes on, had not been enforced in the Courts of the Hooghly district in respect at least of the last precaution. The District Magistrate therefore ordered in November last that the rule regarding shoes should be enforced. In his order he omitted to add the words which had been made an addition to the Code by the Police Order of 6th February, 1903. These words limit the order to prisoners 'who wear shoes of Indian fashion.' A few weeks after the Magistrate's order was issued, his attention was drawn to this omission; and he modified his order accordingly.

"In the case referred to, the Deputy Magistrate directed the accused to remove his shoes; and this was apparently done in accordance with the order without any protest. The Lieutenant-Governor has had no reason for directing the withdrawal or modification of the District Magistrate's order, as he had already of his own motion brought that order into strict conformity with the orders of Government."

FINANCIAL EFFECT OF THE PROPOSED TRANSFER OF CERTAIN DISTRICTS TO ASSAM.

The Hon'ble BABU BHUPENDRA NATH BASU asked :—

(1) Will the Government be pleased to prepare a statement for the information of the public, showing the amount of revenue and expenditure under each head of receipts and disbursements of each of the five districts of Bengal that are proposed to be transferred to Assam?

(2) And will the Government be pleased to state how the proposed transfer would affect the financial position of Bengal, and if it leaves Bengal poorer, how the deficiency is proposed to be met?

The Hon'ble MR. SHIRRES replied :—

"A similar question was asked by the Hon'ble Dr. Asutosh Mukhopadhyaya in the Supreme Council on the 22nd January. In reply he was told that any consideration of financial details, such as were referred to in his question, would be premature at the present stage. When a final decision is arrived at, any adjustment that may be found necessary will be made in connection with the Provincial Settlement. It is not necessary to say more than this at the present time."

ORDER OF ROTATION FOR ELECTION OF MEMBERS FOR THE BENGAL LEGISLATIVE COUNCIL.

The Hon'ble BABU BHUPENDRA NATH BASU said :—

Will the Government be pleased to lay on the table a statement showing the order of rotation of the different constituencies which vote for the election of Members to the Bengal Legislative Council, as was done in 1893 on the re-constitution of the Councils?

The Hon'ble MR. MACPHERSON replied :—

"It was decided last year by the late Lieutenant-Governor to defer preparation of such a list as was published in the Bengal Government Resolution of 25th March, 1893, showing the rotation in which Municipalities and District Boards should exercise the privilege of nominating Members for the Bengal Council.

"His Honour does not consider that it would be expedient for him at present to cause such a statement to be drawn up. He proposes to take up the matter later."

EMPLOYMENT OF EUROPEANS AND EURASIANS AS CLERKS IN THE SECRETARIAT.

The Hon'ble BABU BHUPENDRA NATH BASU asked :—

(1) Has the attention of the Government been called to an article appearing in the *Unity and the Minister* (an organ of the Brahmo Samaj) of the 27th December, 1903, under the heading "Extended employment of Europeans and Eurasians in the Bengal Secretariat clerical service"?

(2) Will the Government be pleased to make known its reasons for reserving 40 appointments in the superior grades of the clerical establishment of the Bengal Secretariat, carrying salaries between Rs. 60 and Rs. 400 a month, for Europeans and Eurasians?

(3) Is the Government aware that the reservation so made gives the following percentage of appointments to the reserved classes :—

Grade I.	Grade II.	Grade III.	Grade IV.	Grade V.	Grade VI.	Grade VII.	Grade VIII.	Grade IX.	Total Grades I to IX.
Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
400	300	200	150	125	100	80	70	60	...
33·3	42·85	25	26·3	31·57	27·22	28·57	26·31	23·07	27·77

whereas the percentage of the reserved classes with reference to the general population of Bengal is only ·05?

The Hon'ble MR. EARLE replied :—

"The article in the *Unity and the Minister* of the 27th December last, and the question of the Hon'ble Member, appear to proceed on the assumption that the Notification of this Government of the 5th December, 1903, contemplates that Europeans and Eurasians should be more extensively employed in the Secretariat than has been the case in the past.

"2. This is not the case. It has always been accepted as necessary that a certain number of appointments in the Secretariat should be held by Europeans and Eurasians; but, under the system of examination in force, it was found that the requisite number was not being recruited. It was necessary to arrange for recruiting European and Eurasian clerks separately. The special cadre has been formed with the object of securing that the requisite number of officers of this class shall be available.

"3. The appointments reserved have been distributed between the several grades in accordance with what past experience has shown to be expedient."

SEPTIC TANKS AT RISHRA.

The Hon'ble BABU BHUPENDRA NATH BASU asked :—

(1) Has the attention of the Government been drawn to a memorial addressed by the Hindu inhabitants of Rishra to the Magistrate of Hooghly, which appeared in the *Bengalee* of the 13th January last, in which they protest against the installation of septic tanks by the Hastings Jute Mills at Rishra?

(2) Is it the case, as the Chairman of the Serampore Municipality points out in his report to the Magistrate of Hooghly, which also was published in the *Bengalee* of the 13th January, that the intake of the Howrah Water-works is in close proximity to the places where the effluents from the septic tanks of the Rishra Mills have been arranged to fall into the river, and that they are not far from the intake of the Calcutta Water-works at Pulta?

(3) Is it the case, as observed by the Hindu inhabitants of Rishra in their aforesaid memorial to the Magistrate of Hooghly, that the site selected for the discharge of the contents of the septic tanks into the river is in the immediate vicinity of a Hindu temple and in the midst of a crowded locality?

(4) Having regard to sanitary considerations and the necessity of preventing the pollution of the river and the affront to the religious feelings of the Hindu community which such pollution involves, especially when caused by converted human excreta, will the Government be pleased to direct in the terms of the recommendation of the Chairman of the Serampore Municipality that the discharges from the septic tanks at Rishra should not be permitted to go into the river, and that they be diverted into the fields, where they may be used as manure?

The Hon'ble Mr. SHIRRES replied:—

"The memorial referred to in the first part of the question has been received by the Lieutenant-Governor.

"The intakes of the Howrah and Calcutta Water-works are respectively $1\frac{3}{4}$ and 4 miles distant from the mills; but they are situated above and not below the mills. The upward movement of the water owing to the tides has been believed not seriously to affect the position.

"The Commissioner reports that there is no temple near the outfall or any building except those belonging to the mill. The temple is described by the Magistrate as a small roadside temple, and is near the septic tanks on the other side of the road and not near the outfall, as described in the question.

"In regard to the last paragraph of the Hon'ble Member's question, the Hon'ble Babu Kali Pada Ghosh was informed at the meeting of 12th December that the matter is receiving attention. The owners and managers of mills have been informed that they should not arrange for the installation of septic tanks without obtaining approval of the Sanitary Board to the effluent arrangements. Meanwhile existing tanks are in every case being examined and the Rishra tank is being specially dealt with."

THEFT OF GHEE ON RAILWAYS.

The Hon'ble BABU BHUPENDRA NATH BASU asked:—

(1) Has the attention of the Government been called to an article which appeared in the *Bengalee* of the 24th January last, in which a statement appears showing the number of tins of ghee which have been stolen from the railway godowns or on transit within the last few months, entailing heavy loss on the dealers?

(2) Is the Government aware that such thefts of parcels are of frequent occurrence, and that those who are put to loss in consequence have no remedy against the Railway authorities under the form of Risk Notes at present in vogue?

(3) Is the Government aware that Mr. Robertson, the Special Railway Commissioner, recently deputed by the Government of India, is of opinion that the conditions attaching to the Risk Notes in use on Indian Railways are of a very onerous nature, and has recommended that the Indian form of Risk Notes should be assimilated to the English form?

(4) Will the Government be pleased to take such steps as it may deem fit with a view to prevent the frequent recurrence of thefts of this kind?

The Hon'ble Mr. HORN replied:—

"The report in the *Bengalee* newspaper of the 24th of January as regards the theft of ghee may be accepted as correct, except that the thefts have been distributed throughout the East Indian Railway, and have not been confined to Howrah alone. The total number of tins shown in the statement was about 5,000, and the transactions were distributed over a period of about seven months. The total number of cases said to have been lost was 163, so that the percentage works out to 3.27. The total number of tins of ghee which are delivered monthly in Howrah approaches 100,000.

"Ghee is peculiarly liable to thefts because it is packed in tins of a very portable description, and because it is of high value, say, Rs. 40 per maund. Consigners invariably despatch at 'Owner's,' in preference to 'Railway,' risk, and do not avail themselves of the opportunity given by the Railway Company to lock properly the doors of wagons containing ghee consignments.

"This Government is aware that Mr. Robertson, Special Railway Commissioner, recommended in his report the assimilation of the Indian form of Risk Note to that used in England, but as the report is still with the Government of India, no more definite reply can be given to the question.

"Special steps are taken at Howrah to protect ghee consignments. Recent thefts are being inquired into; and certain prosecutions are being conducted. The matter has the Agent's careful attention."

THIRD CLASS MONTHLY TICKETS ON THE EAST INDIAN RAILWAY.

The Hon'ble BABU BHUPENDRA NATH BASU asked :—

(1) Has the attention of the Government been drawn to an article in the *Bengalee* of the 24th January last, pointing out (a) that the rates at present charged by the East Indian Railway on third class monthly tickets between Howrah and Baidyabati are the same as used to prevail when third class fares were 3 pies per mile, and that, while the fares on monthly tickets for stations beyond Baidyabati have been reduced since third class fares were reduced to 2½ pies per mile, the rates between Howrah and Baidyabati have not been reduced, and (b) that the rates for monthly third class tickets for the same distance on the Eastern Bengal State Railway are much less than the rates on the East Indian Railway?

(2) Having regard to the class of people who avail themselves of these monthly tickets, will the Government be pleased to inquire into the matter and take such steps as it may think necessary to redress the grievance?

The Hon'ble MR. HORN replied :—

"With reference to the article in the *Bengalee* newspaper of the 24th of January, regarding the charges for third class monthly tickets between Howrah and Baidyabati, it is correct that the charge at the present time is the same as when third class fares was 3 pies per mile. The charge, however, works out to 1·5 pies per mile, assuming that 26 journeys are taken each way in the month. The fares between Howrah and the longer distance stations to which monthly tickets are issued have been reduced; but it has not been considered necessary to reduce for short runs. The charge for monthly third class tickets between Howrah and Baidyabati is Rs. 6, the distance being 15 miles. Taking corresponding stations on the Eastern Bengal State Railway, the charge to Barrackpore, which is 14 miles, is Rs. 4-6, and to Ichapur, which is 17 miles, the charge is Rs. 5-5.

"The Government of India, under the contract with the East Indian Railway, has no power to fix rates. They can only fix maximum and minimum charges per mile for each class. This they have done, and the rates charged by the East Indian Railway are within the maxima and minima thus fixed."

COMPLAINTS AGAINST KABULIS.

The Hon'ble BABU BHUPENDRA NATH BASU, in the absence of the Hon'ble Maulvi SERAJ-UL-ISLAM, KHAN BAHADUR, asked :—

(a) Has the attention of Government been called to an article in the *Tripura Hitoishi* of the 19th January, 1904, complaining of the conduct of bands of Kabulis who go about in the mufassal, under the pretence of selling cloth, and commit oppression upon the villagers?

(b) Will the Government be pleased to direct the local authorities to take the necessary action for the removal of the complaint, which seems to be general in almost all the districts of Bengal?

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The Hon'ble Mr. MACPHERSON replied:—

"The Lieutenant-Governor has seen the article to which the Hon'ble Member's question refers.

"The statements made therein are of a general nature on which it is not possible to base inquiry; nor is it stated whether complaints have been made to the local Magistrates.

"Many Kabuli traders travel through the districts, and it has before been reported that some of them are domineering and oppressive in their transactions. It is not possible to interfere with the movements of *bonâ-fide* traders unless they break the law. The standing orders contained in the Police Code impose upon Police Officers the duty of protecting the public from depredations of wandering gangs, whose object is plunder rather than legitimate trade."

THE BENGAL AND NORTH-WESTERN RAILWAY.

The Hon'ble Mr. HORN, in continuation of the Answer given to the Question on this subject by the Hon'ble RAI TARINI PERSHAD, BAHADUR, at the Council Meeting of the 12th December, 1903, said:—

"A reference was made to the Consulting Engineer at Lucknow on the subject of the question that was asked by the Hon'ble Rai Tarini Pershad, Bahadur, at the Meeting of this Council, held on the 12th December, 1903, in connection with certain complaints which appeared in the *Bengalee* newspaper of the 21st October, 1903, regarding the management of the Bengal and North-Western Railway, and the following information has been obtained:—

- (1) There are ladies' waiting-rooms at seven of the principal stations of the Bengal and North-Western Railway for 1st and 2nd class passengers; and at Muzaffarpur, Samastipur and Benares City for *purdahnasheen* ladies of all classes.
- (2) Increased and improved accommodation has been and is being provided for third and intermediate class passengers in new and improved vehicles.
- (3) The number of passenger trains has been increased.
- (4) The vacuum brake has been fitted, and is in use on 50 locomotives, and is being fitted to the passenger stock of the fast trains.
- (5) There has been no reduction of speed since the Sonapur accident; and the passenger train daily mileage has been increased and the mixed train mileage reduced."

The Council was then adjourned to Saturday, the 13th February, 1904, at 11 A.M.

CALCUTTA;
The 8th February, 1904.

F. G. WIGLEY,
Secretary to the Bengal Council and
Assistant Secretary to the Govt. of Bengal,
Legislative Department.

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The Calcutta Gazette.

WEDNESDAY, FEBRUARY 24, 1904.

PART IVA.

Proceedings of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

*Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal,
assembled under the provisions of the Indian Councils Acts, 1861 and 1892.*

The Council met in the Council Chamber on Saturday, the 13th February, 1904.

Present:

The Hon'ble SIR ANDREW FRASER, K.C.S.I., Lieutenant-Governor of Bengal, *presiding*.

The Hon'ble MR. C. E. BUCKLAND, C.I.E.

The Hon'ble MR. L. HARE, C.I.E.

The Hon'ble MR. B. L. GUPTA.

The Hon'ble MR. J. T. WOODROFFE, Advocate-General of Bengal.

The Hon'ble MR. W. C. MACPHERSON, C.S.I.

The Hon'ble MR. D. B. HORN.

The Hon'ble MR. L. P. SHIRRES.

The Hon'ble MR. A. EARLE.

The Hon'ble MR. R. T. GREER, C.S.I.

The Hon'ble MR. T. K. GHOSE.

The Hon'ble MR. H. ELWORTHY.

The Hon'ble MR. A. A. APCAR.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR.

The Hon'ble RAI TARINI PERSHAD, BAHADUR.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, M.A., D.L., F.R.A.S., F.R.S.E.

The Hon'ble BABU BHUPENDRA NATH BASU, M.A., B.L.

The Hon'ble BABU SALIGRAM SINGH.

QUESTIONS AND ANSWERS.

RAILWAY FERRY BETWEEN PALEZA AND MAROOFGANJ.

The Hon'ble BABU SALIGRAM SINGH asked:—

(a) Is the Government aware that the Bengal North-Western Railway Company have received the sanction of the Government of India to establish a ferry between Paleza and Maroofganj for the accommodation of railway traffic only, with permission to call at several points for the like accommodation of railway traffic on the south bank of the Ganges between Patna and Deegha?

(b) Is the Government aware that permission to the said Railway Company to establish such a ferry was previously refused by the Government of India after prolonged inquiries had been made into the rights of the matter and the opinion of the Hon'ble the Advocate-General of Bengal was taken on the subject, and that finally, in February, 1903, the Company were asked by the Government of India to arrange terms with the Patna Municipality, if they desired to establish the ferry in question?

(c) Has this Government any information as to the circumstances which may have transpired since then to induce the Government of India to rescind their own previous order on the subject and to grant permission to the said Railway Company to establish a ferry between Maroofganj and Patna? If not, will this Government be pleased to inquire from the Government of India?

(d) Is the Government aware that the establishment of this ferry by the Bengal North-Western Railway Company, during the continuance of the contract which the Magistrate of Patna, acting on behalf of the Government under the Ferries Act, entered into in 1903 with a private contractor for three years up to May, 1906, for the Patna group of ferries, of which Paleza is the most westerly landing-place on the north bank of the river and Maroofganj the most easterly on the south bank of the river, constitutes a breach of contract?

(e) Is the Government aware that the establishment of this ferry has already led to a diversion of traffic, that the ferry-contractor has already complained to the Magistrate of Patna to the effect that it will finally interfere with his ability to pay the sum for which the ferries were settled with him, viz., Rs. 29,000 annually, and that it is extremely improbable that it will ever hereafter be possible to settle these ferries, while the rival ferry of the Bengal North-Western Railway Company continues to ply, even for a fraction of the sum at which they are at present settled?

(f) Is the Government aware that about one-seventh of the income from the Patna group of ferries goes to the Patna Municipality, and that the loss of income from this source will seriously affect the finances of the Municipality and its established scheme of sanitary and other works?

(g) Will the Government be pleased to state what steps they propose to take in the matter with a view to safeguard the financial interest of the Patna Municipality against loss of income caused by the establishment of the aforesaid ferry by the Bengal North-Western Railway Company?

The Hon'ble MR. SHIRRES replied:—

"A reference has been made to the Government of India on the subject dealt with in the question of the Hon'ble Member. This Government is not at present in a position to give any information regarding the Railway Ferry between the Paleza and Maroofganj Ghâts."

THE BENGAL PUBLIC PARKS BILL.

The Hon'ble MR. BUCKLAND moved that the Report of the Select Committee on the Bill for the regulation of Public Parks in Bengal be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. BUCKLAND also moved that the clauses of the Bill be considered in the form recommended by the Select Committee. He said :—

“The Report of the Committee, as Hon'ble Members will see, is a short one, and contains, I think, all that need be said on the amendments which the Select Committee have made.

“The first one of any importance is in clause 3, which was introduced on my own motion, because it had been brought to my notice that cases had occurred at the Botanical Gardens of disturbances and want of discipline and trouble with the public and the garden servants at the landing stage or pontoon, which we all doubtless know; and it seemed to be possible that in time to come the Local Government might require, for some reason or other, to include small portions of land in the areas of public parks which are not now contained in these parks. It seemed to me, therefore, that the proper time had now come for this opportunity to be taken for the Government to have legal power to make some slight alteration in the areas of gardens and parks, and in this particular case it is clear that the pontoon or landing stage at the Botanical Gardens should be included in that park.

“In section 4, clause (4), the list of particular purposes for which rules may be made has been amplified. I think it may now be claimed that those purposes have been dealt with exhaustively. I have thought over the matter, and nothing more has occurred to me as being necessary.

“We have inserted in sub-clause (5) the provision that all rules made under that section shall be published in the Calcutta Gazette, so that there shall be no idea of rules being made without the knowledge of the public.

In another clause the word ‘detained’ has been substituted for the word ‘arrested,’ so that there shall be no power of arresting or confining the body of an offender. All that is required is, that the person offending shall be detained until his case has been gone into. We have also provided that the minimum period for such detention should be reduced from 24 hours to 12 hours. As I have said before, the detention should be of very limited duration.

“We have also provided that the durwans and Superintendents of these parks shall be deemed to be public servants, so that they will thereby be vested with all the responsibilities attaching to public servants under the Indian Penal Code. The whole object of the Bill, as I explained before, is to take legal power for doing that which is now done by rules without legal power. One object is to keep the police out of these parks. It is necessary that the durwans and Superintendents, the people to whom we propose to give such authority as is required to keep order and discipline, should be vested with such powers which, for want of a better term, I may describe as *quasi-police* powers. I, therefore, commend this motion to you.”

The Hon'ble BABU BHUPENDRA NATH BASU said. —“As one of those who opposed in some measure the Bill when it was introduced, I shall offer a few observations on the Bill. Since the Bill was introduced in this Council I have been satisfied that the necessity exists for the control of these parks, for some powers being vested in the authorities concerned to prevent breaches of discipline and the commission of offences, and for that purpose some legislation of the nature introduced should be passed. In the Select Committee we have tried to minimise the effect of those sections which would imperil the liberty of the people. The power of arrest has been taken off and the time of detention has been reduced from 24 hours, as originally introduced in the Bill, to 12 hours. Moreover, an offender has been given the option, if he so desires, of being taken at once to a Magistrate and not to the thana. The alterations that have been made in Select Committee will, I hope, take away from the Bill its penal character and in its present shape make it acceptable to the public.”

The Motion was then put and agreed to.

The Hon'ble Mr. BUCKLAND also moved that the Bill as amended be passed. He said:—

"I do not think any further remarks are necessary from me on this motion."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"Before the motion is put to the Council, may I be permitted to make one suggestion? As has been rightly pointed out, the effect of this Bill is to confer *quasi*-police powers on park-durwans, and it has been apprehended by people that although this may be necessary, it may in some cases lead to hardship. The suggestion I beg to submit is, that the Government should call for reports of all cases of prosecutions under the Act, say within a period of the first two years after the commencement of this Act. This will enable the Government to see whether prosecutions are instituted needlessly, and whether they are carried on in the interests of justice or otherwise. If that is done, the Government will be able to see how the Act works in practice."

The Motion was then put and agreed to.

THE BENGAL TRAMWAYS AMENDMENT) BILL.

The Hon'ble MR. SHIRRES moved that the Bill to amend the Bengal Tramways Act, 1883, be passed. He said:—

"As you are aware the Bill is of the very simplest possible character. It is simply to introduce two words into the existing Bengal Tramways Act."

The Motion was put and agreed to.

THE BENGAL SETTLED ESTATES BILL.

The Hon'ble MR. BUCKLAND moved that the Report of the Select Committee on the Bill to facilitate the family settlement of estates in Bengal be taken into consideration. He said:—

"The task before us in Council with this Bill will not be so light or so easy as that just now performed in respect to the Parks Bill, but I hope that this Bill will not detain us really at any great length. I will, Sir, with your permission, at this stage make such remarks as I have to make in regard to the Bill.

"The Select Committee has altogether met nine times and has given, I think I may say, to this Bill very fullest possible consideration. The papers will show us that the length of the Bill itself has been extended from 5½ to 12 pages, from 24 to 38 sections and the Bill is now divided up into eight parts or chapters where formerly there were none. The Report of the Select Committee, which has been presented, extends to 58 paragraphs. I have particularly been anxious that nothing of any importance should be omitted from the Report of the Select Committee, so that the proceedings of the Committee might be well known to everybody and be in the hands of the Council before the Bill came before us in Meeting.

"In the Committee our principal object has been to develop the principles upon which the Bill is based and to provide for every detail as it presented itself to us in considering the clauses of the Bill, and to provide that, when legislating for the conferring of privileges and unusual rights on probably a very limited number of landholders, we should take care to provide that no injury was done to the rights of third persons who might be affected otherwise by such a measure.

"The Bill has necessarily been largely affected by principles of English law with which the learned lawyers who were on the Select Committee—and to whom our acknowledgments are due, as also to the Secretary of the Council, for the great assistance they have rendered us in the consideration of the Bill—

are much more familiar than I am. I mention this fact as we had to follow, in settling the details, the principles of English law, and because there are in this Bill a number of terms, such as settlement, estate, tenant for life, and such like, which, if dealing with Indian law, would have very different meanings from those which such words must bear in such a Bill as that now before us.

"One main principle of the Bill is that the opportunity of settling their estates should be open to all landholders of whatever class, whatever race, whatever degree. The question very soon arose whether landholders who were affected by the Mitakshara law should have the privileges of this Bill, but we very soon came to the conclusion that the facilities with the privileges conferred by the Bill should be available to all classes, and that there was therefore no warrant for excluding persons under the Mitakshara law or Muhammadans or any other members of the community. Nor have we excluded, by the imposition of any financial limit, any of the poorer landholders, though I presume the Government of the day would not allow any landholders, except those in a distinctly substantial and wealthy position, to take advantage of such a measure.

"Another principle we have worked out and observed most carefully is that on no account should this Bill be regarded as an Incumbered Estates Bill. That is distinctly brought out in the Report of the Select Committee, which says:—'The Bill, as observed in paragraph 3 *ante*, is not an Incumbered Estates Bill, and the amendments just mentioned are designed in order to prevent its being applied to any estate which is insolvent or heavily indebted, while they will also meet objections taken by the Bengal Chamber of Commerce and the Calcutta Trades Association, with which we are in unison, as to the insufficiency of the Bill, as introduced in Council, to protect the interests of creditors.' We have, I should add, been guided throughout by the desire to protect the interests of third persons, whether secured or unsecured creditors, chiefly the secured creditors. But we do not propose to interfere with petty debts under, say, Rs. 500 in each case.

"Another principle which has been maintained is that stamp duty should be levied on the settlement of an estate to the extent of 25 *per cent.* on the annual income of the property to be settled, and that this stamp duty should be levied on all original settlements. Whenever a settlement is made for the first time, whether now directly the Bill is passed or in the future, the stamp duty on any original settlement is to be taken once for all. But there is provision for what I may call the renewal of these settlements, and, when any fresh settlement is made by renewal of the original settlement, there will only be a nominal stamp duty of something like Rs. 10. If the Members of Council will read attentively the Report of the Select Committee they will see that a fresh settlement means the renewal of the original settlement. But on the occasion of such a renewal (that is, by the renewal of the original settlement) it will be possible by a supplementary settlement to add to the original settlement, while on any supplementary settlement the stamp duty will have to be charged, as it would be in the case of an original settlement.

"Another principle which is perhaps not quite clearly brought out in the original Bill has been made more clear in the Bill now before us, as explained by the Report of the Select Committee. It is in regard to the meaning of the expression 'three generations.' The original intention of the Government was that the three generations to whom the settlement should apply should be the original settlor, his son, his grandson, and that the remainderman should be the fourth person. The Bill as originally drafted made the third person, the grandson of the original settlor, the remainderman. The Bill has now been altered to carry out the original intention, so that the settlement will remain for three generations, including the settlor himself, his son, and his grandson, the remainderman being the fourth person, that is (excluding the settlor) his son, grandson, and the remainderman. By the provisions of the Bill we have avoided that bugbear of English law, perpetuities. But by the system of renewal of settlement, provision has been made for continuity of settlement. It will always be open to a family to let the settlement expire if they so desire, if they find it is not satisfactory or does not answer their expectations.

Thus, while avoiding perpetuities, provision has been made for continuity of the settlement at distinct stages.

"These are, I think, the chief principles of the Bill which have been borne in mind and elaborated. We have in the elaboration of the Bill made provision for the application to be reduced to writing and to be published, and a declaration to be made by co-owners and co-sharers to the effect that they are willing to assent in the proposed settlement. We have provided, by way of giving greater publicity, that copies of all applications for settlement shall be sent to each creditor or co-owner or co-sharer, and we have provided that the notification in the Gazette shall set forth the application and details, and so on. At any rate every provision has been taken for giving publicity to what is material. We have also provided that, on the expiry of the settlement, if it is allowed to expire by the action or inaction of the family concerned, the rights of co-owners or co-sharers or their descendants shall be restored.

"We have also provided more elaborately than before for the maintenance of co-owners and co-sharers, if any, who have assented to the settlement of their sharers, and of all persons who at the time of the expiration of the settlement may be entitled to maintenance out of the estate, so that nobody can say that he or she was wronged by the settlor doing what he likes with his wealth, his superfluous property, which he has at his own disposal to settle as he likes.

"We have also made it quite clear, I think, by clause 19, [clause 20 of the Bill as passed], in view of the special stamp duty of 25 *per cent.* on settlements, that it is not intended to levy succession duties on property, debts or securities covered by a settlement. It has been therefore declared by clause 19, [clause 20 of the Bill as passed], that probate, letters of administration or a succession certificate need not be taken out in respect of such property, debts or securities, and we have added a sub-clause to declare that if any probate, any letters of administration or any succession certificate should purport to cover any such property, debts or securities, no Court-fee shall be levied in respect thereof.

"In clause 26 [clause 27 of the Bill as passed], we have provided that rents of a settled estate which were in arrear immediately before the death of a tenant for life shall belong to the next holder of the estate and not to the heirs, executors, administrators, or assigns of such tenant. This is a matter in which contention is very likely to arise, and it seems to us very proper that the Bill should provide for the occurrence of such arrears, and that these arrears arising from the estate should properly belong to the settled estate itself and should go to the proprietor or tenant for life for the time being, and that they should not be wafted away from the estate and placed at the disposal of the heirs of the deceased tenant for life.

"We have also provided in clause 27 [clause 28 of the Bill as passed], that the tenants for life should be debarred from alienating any part of a settled estate or the profits thereof for any period except of course in the cases provided for in clauses 28 and 29 of this Bill [clauses 29 and 30 of the Bill as passed]; for if alienations were allowed the objects of the Bill would be defeated.

"Clauses 28 and 29 [clauses 29 and 30 of the Bill as passed], provide for those cases in which the Committee were of opinion that sales and leases by tenants for life might be effected, but should be required to be with the sanction of the Civil Court in one case and the Local Government in the other. We have also, in giving the Civil Court power to sanction the sale of the settlement affected, provided that the proceeds of the sale are to come back to the *corpus* of the settlement. We have also made it more clear that the tenant for life should not benefit in the event of landed property being brought to sale for arrears of Government Land Revenue. It would have been very undesirable to allow a tenant for life to have the power of letting his estate, in default of payment of Government revenue, be put up for sale, so that he, the tenant for life, might pocket

the surplus proceeds of the sale, and the body of the settlement be thereby seriously injured. We have, therefore, made a special provision to prevent *benami* purchases on behalf of the tenant for life, so that, if the property does come for sale for arrears of Government revenue, the tenant for life shall not benefit by a *benami* purchase being affected in his name.

"The last clause is also new. It 'saves the right of secured creditors whose incumbrances have not been set forth by an applicant for settlement, or who may not have assented to conditions inserted in an instrument of settlement for the continuance or discharge of their incumbrances.' Of course it is intended that all the incumbrances shall be set forth, and that nothing shall be done without the consent of the creditors for the continuance or discharge of their incumbrances, but supposing that any debts or incumbrances should happen to be overlooked, this provision of law to the Bill will save any rights of secured creditors.

"I think I have mentioned quite at sufficient length the main changes that have been introduced by the Select Committee in their Report, which I now commend to the Council. A genuine effort has been made, I think, to meet every possible case that may occur. No doubt it is legislation of an unusual character, but the policy of it has been long ago settled and has been accepted by this Council. Our object has been, as I say, to provide for every contingency that suggests itself, and I think those who have studied the Bill will see that the Report of the Select Committee fully explains all the changes we have made in the direction."

The Hon'ble MR. WOODROFFE said:—"This Bill has been made the subject of some hostile criticism. It has been said in the first place that the proper procedure was to bring in a private Bill such as was passed for Sir Jamsetjee Jeejeebhoy's estate; secondly, it was said that it offends against Hindu law in that it legalises the rights of unborn persons and members of joint Mitakshara families; thirdly, that it offends against the law of perpetuity, that is, is retrograde in its character and that it withdraws property from the domain of commerce.

"I had the honour of being a Member of the second Select Committee to which this Bill was referred. I found that the Bill had been introduced with due authority into the Council, and that the principles of the Bill had been accepted when it was referred to the consideration of the first Select Committee that was appointed to consider it. Speaking for myself, perhaps I should have been in favour of a separate Bill for certain specified persons being introduced; but finding that the question had passed, so far as the Select Committee were concerned, beyond the range of discussion, we proceeded to consider the Bill upon the lines upon which it was framed and submitted to Council.

"It is true that it does legalize, in cases which come under it, provisions respecting rights of unborn persons, and it is also true that, to a certain extent, it withdraws property from the ordinary domain of commerce, but your Select Committee, bearing in mind the fact that for motives of policy it was thought fit that there should be such a Bill introduced, considered that there was no reasonable objection to the conferring of rights upon unborn persons, and other persons whom it might be desirable to include in and by the settlements therein provided for.

"As regards the question of withdrawing property from the ordinary domains of commerce, the Council will observe that by the provisions of this Bill there is power given to the settlor or tenant for life to grant putnies and other permanent tenures as well as leases for long terms which are alienable and can without restraint be dealt with by the grantees of such tenures or leases and their assignees.

"There is no doubt that the Bill is somewhat complicated by the fact that the members of a Mitakshara family may be brought within the scope of this Bill, but that principle also, I found, had been adopted, and although the question was raised in Select Committee, I did not think fit to press the objection on that score.

"As the Hon'ble Member in charge of the Bill has justly observed, the labours of the Select Committee were devoted mainly to hedging round applications for settlement with such restrictions, and making them subject to such conditions as would be least likely to cause injury to third persons. This has been the principle which animated the Committee in the changes and alterations made. I think the Committee has succeeded in these respects, and they have, I may add, specially taken into consideration the representation made by the Chamber of Commerce, the Trades Association, and other parties whose objections were laid before us."

The Hon'ble BABU SALIGRAM SINGH said :—"The numerous additions made in the Bill by the Select Committee required that this matter should be considered fully by the public before it is passed into law. Specially the persons who are concerned in the Bill ought to know what changes have been made by the Select Committee. Therefore I ask the Council to consider whether or not more time should be given for the consideration of this measure before it is finally passed into law. The Bill was published in the Calcutta Gazette on the 3rd February. It was brought into Council on the 4th February, and it has been admitted that there were considerable alterations in the Bill made by the Select Committee. Therefore, I would ask your Honour to allow it to stand over for further consideration, and that if possible, the amended Bill should be circulated to the different Associations. If this is not possible, I hope that, at any rate, the Council will agree to the consideration of the Bill being adjourned for a short time."

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The Hon'ble MR. BUCKLAND said :—"It seems to me that the further postponement of this matter is entirely uncalled for and quite unnecessary. As I explained just now, the object of the Select Committee has been to develop the principles of the Bill. One point was whether this Bill should be applicable to all classes of the community, and the development has been in that direction, viz., to make it available to all classes of the community and to provide in every possible way for estates being properly preserved and properly regarded, and the Bill has received every consideration in detail."

"The effect of the postponement of this Bill would be to require its republication. I do not know how long the postponement would be asked for. We do not know what would happen in such an event. We do not know what new hares might be started. We do not know whether, when the Bill came up again at the last moment, we might not have further pleas for the Bill being postponed."

"There is no necessity for any single individual taking advantage of this Bill unless he is so inclined. There is no obligation for any person, if he does not like the terms of the Bill, to apply for a settlement under it."

"I entirely object to the plea for postponement being brought forward, I would not say at the eleventh hour, but at the very last moment. The Hon'ble Member will allow that this Bill was published ten days ago, according to the recognised procedure. The Bill has been before the Council for six months. Ten days ago it was put into the Gazette, and the Hon'ble Member and his constituents might well have sent in their amendments within the first few days, certainly in time. But at the very last moment he comes forward with his plea for postponing it. It makes legislation almost impossible in this Council. Here we are, having all worked ourselves up to the occasion. We all know what there is in the Bill. The Members of the Select Committee have the whole of the subject at their fingers' tips, and surely the Members of the Select Committee may be trusted to safeguard the rights of the public, as well as the Hon'ble Member and his constituents? Now what does this postponement entail? It entails the Bill being put off for two months or, probably, three months. We may disperse and anything may happen to cause further delay. Here is this Bill absolutely ready to be passed, and we are now asked to postpone it. This is not fair to the Council; it is not fair to the Select Committee, and it is not fair to the Member in charge."

The Hon'ble THE PRESIDENT said:—"I do not know whether the Hon'ble Member desires to press his proposal for adjournment. The Bill has been before the public since July last year."

The Hon'ble BABU SALIGRAM SINGH said:—"On hearing what the Hon'ble Member in charge of the Bill has said, I desire to withdraw my motion."

The Motion was then put and agreed to.

The Hon'ble MR. BUCKLAND also moved that the clauses of the Bill be considered in the form recommended by the Select Committee. He said:—

"It is hardly necessary for me to take up any further time of the Council by adding any remarks on this motion."

The Motion was put and agreed to.

Clause 7.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in clause 7 (a), after the word "application" the following be inserted, namely:—

[except the particulars inserted therein in pursuance of clause (b) of section 4.]

He said:—"Section 4 provides that every application for settlement must contain certain particulars, namely:—

- (a) a description of the estate, sufficient for its identification;
- (b) a statement of the income yielded annually by the property comprised in the estate, and the revenue, rates and taxes due to the Government, or any local authority annually in respect of such property; and
- (c) a list giving a full and complete enumeration and description of all incumbrances held by secured and unsecured creditors, respectively, and enforceable against the applicant or the estate, with the name and address of each such creditor, and a correct statement of the amount due to each such creditor.

"Section 5 goes on to provide:—

If any estate in respect of which an application is made under section 3 belongs to—

(a) a joint Hindu family, or

(b) co-sharers,

the application must be accompanied by—

(i) a sworn declaration by the applicant,—

in case (a) that he is the *karta* or managing member of the family, or

in case (b), that he is a principal share holder in the estate and has, by custom or with the consent of his co-sharers, as the case may be, the sole right of management over the estate; and

(ii) a sworn declaration in case (a), by the other co-owners or, in case (b), by the other co-sharers, that they are willing to consent to the estate being settled under this Act.

"My suggestion is that the details contained in section 4, sub-section (2), clause (b), relating to the income yielded annually by the property comprised in the estate and revenue and taxes should not be published. Apparently this information is not likely to be useful to anybody, and, so far as creditors are concerned, copies of the application and declaration which accompany it are to be sent to each creditor named in the schedule. In my opinion the publication of these details might sometimes be embarrassing to the settlor, and I would therefore suggest that the words which I have proposed should be added, might be put into the section."

The Hon'ble MR. BUCKLAND said:—"I have no objection to the amendment."

The Hon'ble MR. WOODROFFE said:—"The proposed amendment should be accepted."

The Motion was then put and agreed to.

Clause 5.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, moved that in clause 5 (i), after sub-clause (ii), the following be inserted, namely:—

and (iii) a draft of the proposed instrument of settlement.

He said:—"I must confess that the amendment I now move and certain others that I will ask liberty to move later are not amongst the suggestions I made when the Select Committee, of which I had the honour of being a Member, were considering the Bill. These suggestions did not strike me then, but only afterwards. I also must say that the Select Committee took considerable pains and devoted much time in considering this important Bill, and that I am a little too late now in putting forward my amendments, but they are new and appear to me to be necessary. Having regard to the fact that sworn declarations by co-sharers and co-owners in regard to matters affecting their respective interests have to be made by them, it is natural to expect that they would hesitate to signify consent and to make declarations without knowing the terms and conditions under which a settlement is in contemplation. If copies of the draft instrument of settlement accompany the application, they will be in a position to know and to decide whether they have any objection to the settlement as proposed or not. If a copy of the draft settlement as proposed is to be sent with their declarations to each co-sharer or owner, then it is necessary that a draft settlement should also be sent to the Government when an application is made for a settlement under this Act."

The Hon'ble MR. WOODROFFE said:—"This amendment is not unworthy of consideration. As I understand the Hon'ble Member, he desires that a draft of the proposed instrument of settlement should accompany the application in order that the persons concerned including the creditors as well as the co-sharers and co-owners, should know the exact position of affairs. I would therefore support the amendment."

The Hon'ble MR. BUCKLAND said:—"I have no objection to offer to the amendment. The Hon'ble Member would have been more regular in procedure if he had given us longer notice. It was also open to him in the Select Committee, of which he was a Member, to have brought this matter forward, but he has told us that it did not occur to him at the time, and there is nothing more to be said about it. We want to make the Bill as complete as possible, and for this reason I will not stand in the way at all."

The Motion was then put and agreed to.

Clause 7.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, also moved that in line 3 of the second paragraph of clause 7, after the words "in the application and," the following be inserted, namely:—

shall also send a copy of the said application and declarations and a copy of the draft of the proposed instrument of settlement.

He said:—"My former amendment having been carried, this one follows as a matter of course. I would not be justified in taking up the time of the Council with any lengthy remarks in support of it. The co-owner or co-sharer ought to be furnished with a copy of the draft settlement, as I have already said. It is for this reason that I proposed the last amendment moved by me, and that has been carried. I consider it now necessary to move this amendment."

The Hon'ble MR. WOODROFFE by way of amendment proposed that in line 2 of the second paragraph of clause 7, after the words "which accompanied it" the following be inserted, namely:—

as also a copy of the draft of the proposed instrument of settlement.

The Hon'ble THE PRESIDENT said:—"Would it not be better if it was put in this way:—

The Local Government shall send a copy of the application, and of the declarations which accompanied it, and also a copy of the draft of the proposed instrument of settlement to each creditor who is named in the application, and to each person who has made a declaration in pursuance of clause (ii) of section 5.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, said:—"I gladly accept the alteration suggested by the Hon'ble the Advocate-General."

The Hon'ble MR. BUCKLAND said:—"I have no objection to offer to this amendment."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I think the form suggested by the Hon'ble the Advocate-General is better, as being more comprehensive, than the amendment proposed by the Hon'ble Rai Tarini Pershad, Bahadur. There is no reason why a copy of the draft of the proposed instrument of settlement should not be sent as well to the creditors. I am entirely in favour of the form of the amendment as suggested by the Advocate-General."

The Hon'ble MR. BUCKLAND said:—"Do I understand the Hon'ble the Advocate-General to mean that these words should come in after the words 'accompanied it'?"

The Hon'ble MR. WOODROFFE:—"Yes."

The Hon'ble THE PRESIDENT said:—"The proposal is that a copy of the draft instrument of settlement should be sent not only to those who are interested in the estate, but to every creditor of the settler."

The Motion was then put in the amended form and carried.

Clause 8.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, also moved that at the end of clause 8 (2) the following be inserted, namely:—

and the Civil Court shall, in dealing with any such reference, follow the procedure prescribed in the Code of Civil Procedure for the trial of suits, so far as the same may be applicable.

He said:—"The Civil Court, in determining the matter in dispute referred to it, shall follow the procedure laid down in the Code of Civil Procedure, so far as the same may be applicable. The reason for the amendment is obvious."

The Hon'ble MR. BUCKLAND said:—"I have no objection to this amendment."

The Motion was put and agreed to.

Clause 10.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, also moved that after clause 10 (3) the following be inserted, namely:—

(4) Any settlement made under the foregoing provisions of this Act may provide that any tenant for life may, with the previous sanction of the Local Government, by written instrument, surrender his interest under the settlement in favour of the next tenant for life.

He said:—"I think provision like this is necessary; cases of voluntary surrenders of property by the proprietors for the time being occur in Hindu as well as in Muhamadan families in this country. There are great many instances of cases in which surrenders of large properties have been made in favour of near relations when they determine upon leaving the cares of the world and take to pilgrimage and settle themselves in holy places for the rest of their lives, surrendering their properties to their dearest and nearest. The provision suggested will meet all such cases."

The Hon'ble MR. WOODROFFE said:—"I do not think there is any objection to giving this power of surrender. The circumstances under which it may be exercised are of a somewhat exceptional character, still if a tenant for life does desire to surrender in favour of the next tenant for life, I for one see no objection to the introduction of a clause to that effect."

The Hon'ble MR. BUCKLAND said:—"I see no objection to this amendment, but I should like to have an explanation from the Hon'ble Member who moved it. I suppose it is not intended by him that the settlement should in any way be extended by the operation of this provision."

The Hon'ble RAI TARINI PERSHAD, BAHADUR, said:—"No, I do not wish to extend it in any way."

The Hon'ble MR. BUCKLAND continued:—"If a settlement is made by A for the three lives of A, B and C, and, if A resigns the settlement in favour of B, it does not mean thereby that a fourth person should be included. I would ask the advice of the Hon'ble the Advocate-General whether, by accepting this amendment, instead of the settlor A who surrenders any other person could be introduced into the settlement beyond those who are included in the settlement, and that the surrender of the settlor's interest does not mean that another person is brought into the settlement."

The Hon'ble RAI TARINI PERSHAD, BAHADUR, in reply said:—"I do not wish to introduce any one into it, whether it be the third, fourth, or the fifth person. I simply asked that a settlor who wishes to leave the cares of the world and pass the rest of his life in pilgrimage, in the case of a Muhammadan to Mecca or Medina, and in the case of a Hindu to Benares and other places, may have power to give his interest in his property to his nearest and dearest."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"It would be safer if some such words as these were added to the clause proposed by my hon'ble friend to my left:—

Provided nothing in the section shall affect the provision of section 10, sub-section 2, clause (i).

"Of course the object we have in view is, that it may not be taken as continuous for the purpose of extending the settlement perpetually. Section 10, sub-section (2), provides that after the life of the third tenant for life, the eldest or the only son shall hold the estate absolutely. If we do not insert some such provision as the one I have mentioned, it may enable the settlement to go on perpetually."

The Hon'ble THE PRESIDENT said:—"Would not that be met by the definition given in section 2? If you look at what the Hon'ble Member proposes in the item of business No. 11*, taken in connection with this definition, that meets the whole case."

The Hon'ble MR. WOODROFFE said:—"The definition of 'second tenant for life' refers only to the person who, under the terms of the settlement, has to take the settled estates on the death of the first tenant for life. It will have to be amended so as to include the case of one who takes on surrender. So amended, it will safeguard the question which was raised by the Hon'ble Member in charge of the Bill."

The Hon'ble THE PRESIDENT said:—"Then the Hon'ble Rai Tarini Pershad, Bahadur, proposes in the next item of business that an instrument of surrender shall not take effect unless it has been approved by the Local Government before such execution, and the effect of such approval having been given, you certify that instrument by one of the Secretaries of the Local Government."

The original Motion was then put and agreed to.

* i.e. the amendment of clause 2 proposed by the Hon'ble RAI TARINI PERSHAD, BAHADUR.

Clause 2.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, also moved—

- (1) that at the end of sub-clause (e) of clause 2 the following be added, namely:—
or on the surrender by the first tenant for life of his interest under the settlement;
- (2) that at the end of sub-clause (f) of clause 2 the following be added, namely:—
or on the surrender by the second tenant for life of his interest under the settlement.

He said:—"The reason of this amendment I have already given."

The Hon'ble MR. WOODROFFE, by way of amendment, proposed—

- (1) that at the end of sub-clause (e) of clause 2 the following be added, namely:—
or who on the surrender by the first tenant for life takes his interest under the settlement;
- (2) that at the end of sub-clause (f) of clause 2 the following be added, namely:—
or who on the surrender by the second tenant for life takes his interest under the settlement.

He said:—"I could not catch whether the hon'ble mover of the amendment accepts my amendment."

The Hon'ble THE PRESIDENT said:—"The Hon'ble Member read it as in the paper."

The Motion was then put in the amended form and agreed to.

New clause.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, also moved that after clause 18 the following be inserted, namely:—

*18A. (1) No instrument of surrender referred to in sub-section (4) of section 10 shall take effect unless it—
Approval, stamping and registration of instruments of surrender.

- (a) is of a non-testamentary character;
- (b) is attested by two or more witnesses;
- (c) has been approved by the Local Government before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the Local Government;
- (d) is stamped in accordance with the provisions of the Indian Stamp Act, of 1899, and
- (e) is registered within three months after the said approval has been certified as aforesaid.

(2) Subject to the foregoing provisions of this section, every such instrument shall take effect from the date of its execution.

He said:—"The matter of surrender vitally affects the interest of all concerned. It is therefore desirable that before it is made, the desired effect of the formalities suggested should be gone through."

The Hon'ble MR. MACPHERSON said:—"I would ask the Hon'ble the Advocate-General what would be the effect of this clause in case of the refusal of the Local Government to approve a surrender? Supposing that a tenant for life of a settled estate should surrender, and the Local Government did not approve of the surrender, what would be the position of the administration of the estate?"

* Clause 19 of the Bill as passed.

The Hon'ble Mr. WOODROFFE said:—"It seems to me that if the Local Government does not approve of the surrender, it takes no effect at all; it is ineffectual. I understand that the clause proposed to be added is that instrument shall not take effect unless it has been approved by the Local Government. If therefore the Local Government does not approve of it, the instrument of surrender is ineffectual."

The Hon'ble Mr. MACPHERSON said:—"What would happen if it was pronounced to be ineffectual, and the tenant for life notwithstanding should insist upon the surrender?"

The Hon'ble Mr. GUPTA said:—"I think he must take the approval of the Local Government before he executes the surrender, and if the approval is refused, then everything must remain as it was before. In this connection I beg to say that there is no objection to this amendment, but I may suggest that the new section may be numbered 19 and the numbers of the following sections altered accordingly."

The Hon'ble Mr. WOODROFFE said:—"The question raised is met by the amendment of clause 10 which has been already passed. The surrender must be made with the previous sanction of the Local Government. There cannot be a surrender without previous sanction. It seems to me that it follows from the power already taken that it is sufficiently safeguarded because, among other things, it must be approved by the Local Government before any one can effect such surrender and the fact of such previous sanction must be certified by the Secretary of the Local Government on the instrument."

The Motion was then put and agreed to.

Clause 23.

The Hon'ble RAI TARINI PERSHAD, BAHADUR, also moved that at the end of clause 23 [clause 24 of the Bill as passed], the following be added, namely:—

(5) The provisions of section 21 shall apply to every such instrument.

He said:—"The notification of the fact of revocation of the instrument of settlement appears to be necessary in the interest of all concerned. Section 21 [clause 22 of the Bill as passed], provides for notification of the purport of the instrument of settlement. I think it necessary that some provision for notification should be made in cases of revocation also, so that all persons who shall have to deal with the settled estate may be in a position to know the fact of such revocation. For instance, clause 25 [clause 26 of the Bill as passed], provides that when any instrument of settlement is revoked under section 23 [clause 24 of the Bill as passed], the rights of all persons having incumbrances upon the estate shall revive. But the Bill does not provide that any information should be given to such persons. A general notification in the Calcutta Gazette will meet the object, and in that view of the matter a provision for notification becomes a matter of necessity. I may mention that by clause 24 [clause 25 of the Bill as passed], a notification of cancellation and amendment has been provided for, but it is only in regard to cases of revocation that such notification is wanting."

The Hon'ble Mr. WOODROFFE said:—"I venture to think that this amendment is not framed in a very convenient form, and that the object the hon'ble mover has in view would hardly be served by maintaining section 21 [clause 22 of the Bill as passed], as it stands. I therefore propose that in clause 21 [clause 22 of the Bill as passed], sub-clause (1), after the word 'settlement' the words 'or revocation of settlement' be inserted."

The Hon'ble RAI TARINI PERSHAD, BAHADUR, in reply said:—"I shall gladly accept the further amendment proposed by the Hon'ble the Advocate-General. It will be better if this be included in section 21 [clause 22 of the Bill as passed]."

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA said:—"I have been anticipated by the Hon'ble the Advocate-General, except on one point. I was

going to suggest that the words 'or surrender of settlement' be also added to clause 21 [clause 22 of the Bill as passed], sub-clause (1)."

The Hon'ble BABU SALIGRAM SINGH said:—"I beg to point out that a revocation is provided for under section 23 [clause 24 of the Bill as passed], which comes after section 21 [clause 22 of the Bill as passed], in which there is no mention of any revocation."

The Hon'ble MR. WOODROFFE said:—"I do not think that this matters. The Act will have to be read as a whole. There can be no objection to making it perfectly clear by adding the words 'or revocation or surrender.' Then the whole section, incorporating the further amendment proposed by the Hon'ble Dr. Asutosh Mukhopadhyaya, would run as follows:—

*21 (1). When any instrument of settlement or surrender of settlement or revocation of settlement is registered, etc.

The Motion was then put in the amended form and agreed to.

Re-numbering of clauses.

The Hon'ble MR. BUCKLAND moved that the Secretary be directed to re-number the clauses of the Bill in consecutive order, and to make corresponding alterations in all cross-references thereto. He said:—

"As your Honour is aware, we have just inserted a new clause 18A, and some little alterations of this sort are necessary."

The Motion was put and agreed to.

Passing of Bill.

The Hon'ble MR. BUCKLAND then moved that the Bill as amended be passed. He said:—

"I do not think any speech is required from me on this occasion. We have done our best to carry out the policy of the Government and to meet the wishes of the landholders of Bengal. I certainly hope that a certain number of them will come forward and take advantage of the Act, when it has received the sanction of the Governor General in Council.

"I beg once more to tender my sincere acknowledgments to the Hon'ble the Advocate-General, to the Hon'ble Dr. Asutosh Mukhopadhyaya, to the Secretary of the Council, and to the other gentlemen who, in the Select Committee, have given us all possible assistance in our labours, and to the Council for having agreed to the clauses of the Bill."

The Hon'ble BABU BHUPENDRA NATH BASU said:—"I do not think that I ought to give a silent vote on this matter. The Bill has been generally received with approbation, but it has also met with severe and adverse criticism in some quarters. Men with whom I have been associated in public life and for whose opinions I have the highest respect have found fault both with the principle and the policy embodied in the Bill. They have challenged the principle laid down in the Bill as contravening well-known and well-established principles of Hindu and Muhammadan Law. They have challenged the policy creating perpetuities as retrograde and reactionary.

"That the Bill contravenes the law as now interpreted and understood may be fully conceded. Hindu law as at present administered, and I believe Muhammadan law also, are very far from what these laws were meant to be by the ancient Lawgivers, and we are often in a state of bewilderment between the text writers and the law as at present understood. Both Hindu and Muhammadan Lawyers complain that the interpretation of their respective laws by the Courts of India and the Court of Appeal in England have taken them into channels never contemplated by their ancient Lawgivers. I do not refer to those matters by way of justification of the principle of the Bill, but simply by way of illustration to show that even the unchangeable East has had to change with the changing times.

* Clause 22 of the Bill as passed.

"The question is, whether the change sought to be introduced by the Bill is one that commends itself to our judgment and approbation. If it were intended to apply to the general population, my answer would be an emphatic No. It would no doubt be much simpler and more useful if we were given the power of making gifts to persons unborn on the same lines as are laid down in section 101 of the Indian Succession Act. We find every day the difficulty of making suitable provision where a young man of property is going to marry and settle down in life; how difficult it is to provide safeguards for the protection of his property for the benefit of himself and his family. He is exposed to all the temptations which a western civilization has introduced, without the safeguards which protect the youth of the West. But because the Government has not gone as far as we should wish it to go, that is no ground why we should oppose or reject this small measure if it brings relief even to a few families.

"I am aware that jurists and political economists and sociologists have condemned the creation of perpetuities which aim at the formation of a class who neither toil nor spin and who are *kept up* for ostentation and display. I do not propose at this stage to discuss or controvert the propositions that have been advanced against perpetuities. To us in India the uselessness of mere display and show is no new doctrine: it is the doctrine alike of the Vedantists and the Buddhists. But it would be idle to say that great houses serve no other purpose than that of mere show. They stand out, bold landmarks, amidst the shifting sands of time. They link the past with the present and hand down the present to the future. They serve as rallying grounds for all that conserves the social fabric and all that elevates life above the commonplace. Even under the disintegrating influence of our present laws some old houses have withstood the inroads of time, and traditions of the past have clung round them, keeping green memories which, though they are the dreams of to-day, may be realities of the morrow.

"The law, as it now prevails, distributing the property among all the sons, renders it impossible for any family to continue in a position of influence for any length of time. The sons, relying upon all of them getting a share in the patrimony, are apt to let their natural faculties go to rust. They lack the incentive of want and the stimulus of struggle for existence. The result is gradual impoverishment, general deterioration and consequent misery. What is the career open to a young man of wealth in this country? He has not the advantages of an English youth whose horizon is as wide as the bounding circle of the earth, to whom is accessible a career in the Army, the Navy, the Houses of Parliament, the diplomatic service or the Colonies and dependencies of England. The scions of our aristocracy can have no career in the profession of Law or Medicine whose early stages are repellant even to humbler individuals. They cannot enter the public services in competition with men whose memory and intellect are sharpened by hunger and want, and many a life of brilliant promise unable to find an outlet loses itself in the quick-sands of dissipation and extravagance.

"If the Bill is passed into law, the younger sons of families who may come under its purview will know that they will have no portion in the fortune of their father; that they must make the best use of the opportunities to equip themselves for the battle of life, opportunities which are denied to the poor; and they will constitute a middle class who will form the real backbone of the country; great houses may rise and continue in undiminished influence, potent for much good to their country.

"In the earnest anticipation that the Bill will fulfil its promise, that it will serve the end which its framers have in view, that it will perpetuate ancient houses, that it will create a substantial middle class, I vote for it with a safe and clear conscience."

The Motion was put and agreed to.

The Council was then adjourned to a day to be notified hereafter.

CALCUTTA;

The 19th February, 1904.

F. G. WIGLEY,

Secretary to the Bengal Council.



The Calcutta Gazette.

WEDNESDAY, MARCH 23, 1904.

PART IVA.

Proceedings of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled under the provisions of the Indian Councils Acts, 1861 and 1892.

The Council met in the Council Chamber on Saturday, the 12th March, 1904.

Present:

The Hon'ble SIR ANDREW FRASER, K.C.S.I., Lieutenant-Governor of Bengal,
presiding.

The Hon'ble MR. C. E. BUCKLAND, C.I.E.

The Hon'ble MR. L. HARE, C.I.E.

The Hon'ble MR. B. L. GUPTA.

The Hon'ble MR. J. T. WOODROFFE, Advocate-General of Bengal.

The Hon'ble MR. W. C. MACPHERSON, C.S.I.

The Hon'ble MR. D. B. HORN.

The Hon'ble MR. L. P. SHIRRES.

The Hon'ble MR. A. EARLE.

The Hon'ble MR. R. T. GREER, C.S.I.

The Hon'ble MR. T. K. GHOSE.

The Hon'ble MR. H. ELWORTHY.

The Hon'ble MR. A. A. APCAR.

The Hon'ble MAULVI SERAJ-UL-ISLAM, KHAN BAHADUR.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, M.A., D.L., F.R.A.S., F.R.S.E.

The Hon'ble BABU BHUPENDRA NATH BASU, M.A., B.L.

The Hon'ble BABU SALIGRAM SINGH.

QUESTIONS AND ANSWERS.

RECORD-ROOM STAFF IN DISTRICT COURTS.

The Hon'ble BABU SALIGRAM SINGH, in the absence of the Hon'ble RAI TARINI PERSHAD, BAHADUR, said:—

I beg to draw the attention of Government to the following:—

That, according to the rule now in force (*vide* Government Memorandum No. 1280J., dated the 14th March, 1902, addressed to District Judges under the Lieutenant-Governor of Bengal, on the Report of the Commission on the ministerial establishments of the Civil Courts), the ministerial officers for the record-room of the District Courts are:—

one record keeper; three muharrirs for each record-room receiving 15,000 records a year; and, for record-rooms receiving more than 15,000 records a year, one extra muharrir for every 10,000 records received in a year.

That the Commission expressed an opinion substantially to the effect that there should be one muharrir for every 5,000 records in each district. The duties now falling upon the ministerial staff in the record-rooms are too numerous and heavy, and the officers now working are very much overworked.

That, owing to the very heavy work falling upon the ministerial officers of the record-rooms as well as in other departments in several District and Subordinate Courts, such as those of Bhagalpur, Patna, Burdwan, Muzaffarpur, Mymensingh, &c., most of these officers are obliged to stay in office till late hours, and also to attend office and work there even on Sundays and other close holidays; and, although extra hands are sometimes provided, such temporary provision does not sufficiently answer the purpose.

In view of the hardship pointed out, will the Government be pleased to make an inquiry in this connection from the District Officers, and consult the High Court, and kindly consider the advisability of removing this grievance by making necessary additions to the staff?

The Hon'ble MR. MACPHERSON replied:—

"This matter is one which ought in the first instance to be represented to the Judge of any district in which the record-room staff is too small. It would be most inexpedient for the Government to make a general inquiry of this nature without having authentic and definite information of a general necessity for increase of the staff. The Lieutenant-Governor must look to the District Judge to inform him of any need for additional establishment in any particular district."

APPRENTICES IN MUFASSIL CIVIL COURTS AND OFFICES.

The Hon'ble BABU SALIGRAM SINGH, in the absence of the Hon'ble RAI TARINI PERSHAD, BAHADUR, said:—

I beg to draw the attention of Government to the following:—

According to the practice now in force, the apprentices in the District Courts (Civil, Criminal and Revenue) get nothing in the shape of remuneration for their services, extending over several years, before they are employed as ministerial officers or section-writers. Many persons come to be admitted as apprentices from distant parts of the district, and in very many instances, though qualified for apprenticeships, they are unable to seek admission for want of means of livelihood in places where they could be admitted as such.

Will the Government be pleased to consider the desirability of making such provisions as to it may seem fit to remove the difficulties pointed out above?

The Hon'ble MR. SHIRRES replied :—

“The question of granting some allowance or remuneration to apprentices in the Civil, Criminal and Revenue Courts and offices in the mufassil has already engaged the attention of the Lieutenant-Governor and is under consideration.”

COPYISTS AND SECTION-WRITERS IN COURTS.

The Hon'ble BABU SALIGRAM SINGH, in the absence of the Hon'ble RAI TARINI PERSHAD, BAHADUR, said :—

I beg to draw the attention of Government to the following :—

That copyists or section-writers are employed in Civil and Criminal Courts, and are paid from out of the income derived from the Copying Department in a certain proportion, and that to all intents and purposes they are much in the same position as paid ministerial officers in other departments. There are numerous instances of such copyists or section-writers leaving office after a service of 30 years and upwards, without getting anything in the shape of a pension or a gratuity for the support and maintenance of themselves and the families depending upon them. There is no provision in the Civil Service Regulations for such officers after their retirement.

Will the Government be pleased to consider the desirability of making some provision for them on their retirement from the service?

The Hon'ble MR. SHIRRES replied :—

“The Lieutenant-Governor hopes to be able to effect some improvement in the position of the officers referred to by the Hon'ble Member, and the matter forms the subject of a correspondence with the Government of India. No farther information can be given at present on the subject.”

THE CALCUTTA IMPROVEMENT SCHEME.

The Hon'ble BABU BHUPENDRA NATH BASU asked :—

(a) Will the Government be pleased to state if it is a fact, as stated in the *Englishman* of the 15th February last, that a private Conference is sitting to consider the subject of the improvement of Calcutta?

(b) Is it a fact that there are no representatives of the rate-payers in this Conference?

(c) Is it a fact, as stated in the *Hindu Patriot* of the 17th February, that it was proposed at this Conference to levy a death-duty of 5 per cent. on house property in Calcutta?

The Hon'ble MR. SHIRRES replied :—

“Correspondence which showed some tendency to become protracted has been in progress between the Government of India and the Local Government regarding the Calcutta Improvement Scheme.

“To avoid unnecessary delay, and to have the best available assistance in framing proposals for submission to the Government of India, the Lieutenant-Governor invited certain gentlemen to discuss the matter with him. The Conference consisted of two Bengal Officers serving in the Government of India (Mr. H. H. Risley, C.I.E., and Mr. E. N. Baker, C.S.I.), the Financial Secretary to the Bengal Government, the Commissioner of Police, an officer of the Public Works Department, the Chairman of the Corporation, and three non-official Members of the Corporation, one of whom was at that time also President of the Chamber of Commerce, namely, the Hon'ble Mr. E. Cable, the Hon'ble Dr. Asutosh Mukhopadhyaya and Mr. Nalin Behary Sircar, C.I.E. These non-official gentlemen were selected by the Lieutenant-Governor as representing

the interests and views of the different classes of rate-payers. The Lieutenant-Governor presided and Mr. C. G. H. Allen acted as Secretary.

"The proceedings were entirely confidential, and were only intended to assist the Lieutenant-Governor in placing his proposals before the Government of India. The matter is now being placed before that Government; and no information can for the present be given."

RULES FOR THE CONDUCT OF LEGISLATIVE BUSINESS.

The Hon'ble MR. MACPHERSON presented the Report of the Select Committee on the suggested amendments in the Rules for the Conduct of the Legislative Business of the Bengal Council.

The Hon'ble MR. MACPHERSON moved that the Report of the Select Committee be taken into consideration.

The motion was put and agreed to.

The Hon'ble MR. MACPHERSON also moved that the amendments be considered in the form recommended by the Select Committee.

The motion was put and agreed to.

The Hon'ble MR. MACPHERSON also moved that the Amendments, as revised by the Select Committee, be passed.

The motion was put and agreed to.

THE BENGAL EXCISE BILL.

The Hon'ble MR. BUCKLAND presented the Report of the Select Committee on the Bengal Excise Bill, 1903.

The Hon'ble MR. WOODROFFE moved that the Bill be re-committed to the Select Committee, with instructions to re-consider and so amend the same as to secure by express and direct legislative enactment—

- (a) that the principles of the policy of the Government of India, enunciated in paragraph 103, principles (3) and (4),* of their Despatch to the Secretary of State for India, No. 29, dated 4th February, 1890, be given legislative effect, with due regard to the present system of local and municipal institutions prevailing in Bengal;
- (b) that intoxicating liquors and drugs may not be sold, at any house licensed for the sale of such liquors and drugs, to women or to children under the age of 14; and
- (c) that reasonably adequate provision be made therein so as to prevent, as far as possible, the spread of drunkenness in Bengal.

He said:—"On a careful consideration of the Majority Report of the Select Committee upon the Excise Bill and of the Note of Dissent attached thereto by two of the Members of that Committee, and in consideration of the various memorials and papers which were placed before the Select Committee, which have been called for, for the purpose of ascertaining public opinion on the matters therein concerned, I felt that there was laid upon me the necessity of moving the motion which stands over my name. The Select Committee in paragraphs 3 and 4 of the Majority Report state as follows:—

3. *Local option.*—In several of the criticisms which have been received it is urged that the principle of "local option" should be adopted in the Bill, that is to say, that it should be provided that licenses for the sale of intoxicating liquor or drugs in any locality

* "(3) that the number of places at which liquor or drugs can be purchased should be strictly limited with regard to the circumstances of each locality; and

(4) that efforts should be made to ascertain the existence of local public sentiment, and that a reasonable amount of deference should be paid to such opinion when ascertained."

shall not be granted against the wish of a majority of the inhabitants of the locality. The introduction of the principle of local option into Indian Excise Law has been urged before. The question was exhaustively considered by the Government in the years 1886 to 1890, and the Government of India deliberately declared in the latter year that local option was impracticable in this country (*see* paragraph 98 of their despatch to the Secretary of State for India, No. 29, dated the 4th February, 1890, published on page 211 of the Supplement to the Gazette of India of the 1st March, 1890). No change has since occurred in the habits or feelings of the people such as would justify the re-opening of this question, and we have accordingly left it untouched by the Bill.

4. Under existing arrangements, however, although the granting of licenses is not left to the control of local opinion, steps are taken to ascertain what local opinion is before licenses are granted, and all due deference is paid to such opinion when ascertained. This is done in pursuance of clause (4) in paragraph 103 of the Despatch mentioned above. Thus in Calcutta, rule 9 (5) on page 80 of Volume I of the Excise Manual, 1903 (which is sold at the Bengal Secretariat Book Depot), declares that—

No shop shall be opened on a new site unless a notification shall have been affixed, at least 15 days before the grant of the license, at the nearest police-station and in some conspicuous place on or near the proposed site. The notification shall state, for the information of the public, that it is proposed to open a shop (specifying the kind of shop) on the site in question; and the Superintendent shall carefully consider all objections urged by the inhabitants against the opening of such shop, in communication with the Commissioner of Police; and, in the event of a difference of opinion, shall refer the matter, through the Commissioner of Excise, for the decision of the Board of Revenue.

“It seems to me, Sir, that these paragraphs of the Report of the Select Committee do not deal either exhaustively or effectively with the principles enunciated by the Government of India in paragraph 103 of the Despatch referred to. The Government of India, it is true, in paragraph 98 of that despatch stated that the local option was impracticable as a principle to be applied to all India; but that statement is qualified to a considerable extent by the observation that ‘any system of local option presupposes the existence of a highly-developed system of local or municipal institutions to which representatives are elected by the mass of the people, and in which all conflicting interests command their due share of attention. No such system exists in India.’

“That observation of the Government of India must be read as referring to the state of things at the date of this Despatch. Since then there has been a considerable change in India. There has been the establishment of a large number of local and municipal institutions to which representatives are elected by the mass of the people, and in which conflicting interests command and receive due attention. But, Sir, conceding that local option in the sense of, and to the extent of, absolute prohibition of the sale of intoxicating liquors and drugs is even now beyond the range of practical legislation for the reasons assigned in the Government Despatch, there seems to me, regard being had to the subsequent clauses of this despatch, no sufficient reason assigned why in the Bill now under consideration legislative effect should not be given in Bengal, where local institutions and the system of Municipal Government so largely prevail to the principles (3) and (4), enunciated in that Despatch, namely, —

- (3) that the number of places at which liquor or drugs can be purchased should be strictly limited with regard to the circumstances of each locality; and
- (4), that efforts should be made to ascertain the existence of local public sentiment, and that a reasonable amount of deference should be paid to such opinion when ascertained.

“The Government of India go on further to add that ‘the steps we have recently taken in the direction of providing that public opinion shall be consulted have already been explained in Despatch No. 157 of the 25th May, 1889, and Your Lordship has approved them.’ The Government say in that despatch:—

The Government of India are inclined to think that the procedure adopted in Bengal, where distinct instructions have been given to the licensing officers to ascertain and consider local opinion, and directions have been issued that where municipalities exist the Municipal Commissioners should be consulted in determining the location of shops, might be generally followed with advantage. But having regard to the varying conditions of different provinces, it has been thought desirable for the present to leave to Local Governments full discretion to decide what measures are expedient in each case.

"In clause 105 of the despatch of the 4th February, 1890, the Government thus sums up the position:—

The practical measures which we propose to adopt in furtherance of our declared policy comprise (1) the abolition of the farming or outstill system in places where it is found practicable to do so; (2) the gradual introduction of the central distillery system in its least complex form; (3) the imposition of as high a rate of duty on country liquor as it will bear, subject to the limitation that such duty shall not exceed the tax levied on imported liquor; and (4) the restriction of the number of shops. Where the outstill system is retained we shall, as far as possible, enforce the limitation on the capacity of the still, and in some instances a minimum selling price.

We do not anticipate that the carrying out of this policy in a rational manner and with reasonable regard to the circumstances of the country will lead to any loss of revenue. On the contrary, we believe it will be as successful from the financial as from every other point of view.

"I have been given to understand that the outstill system having been found unworkable has been discarded in Bengal proper, but is continued in Bihar and Chittagong. This Bill, however, still continues the farming or outstill system. Any one who considers what the farming system is must appreciate at once that it leads to the maximum of consumption with the minimum of return to Government in the shape of Excise. Every gallon of liquor that can be made, and there is an abundant opportunity of doing so, surreptitiously, owing to the large number of outstills, is a distinct profit to the farmer and a loss of revenue derivable from excise. The farming system also leads to this, that it is the interest of the farmer to push the sale of intoxicating liquors and drugs beyond reasonable limits.

"Fifteen years ago these principles were enunciated by the Government of India, and these instructions were given to the licensing officers to ascertain local opinion, and directions were issued that where municipalities existed the Municipal Commissioners should be consulted in the determination of the location of shops. In the 'Report of the Material and Moral Progress of India, 1901-1902', I read 'definite orders have been passed in accordance with the principles formulated by the Government in 1890 to the effect that before any new site for the establishment of a shop was settled, reference should be made to local opinion, and that any reasonable objections should be considered.'

"Since the date of the despatch of 1890 there has been, as I have observed before, a great growth of municipal and district bodies throughout India. The Government is consequently now in a far better position than it was then to ascertain the local public opinion as to the condition under which, and the places in which, within any given area, intoxicating liquors and drugs should be sold.

"In view, Sir, of the principles thus enunciated by the Government of India, I venture to inquire whether the number of places at which liquors and drugs can be purchased in Calcutta or elsewhere in Bengal have been restricted or not, and whether in the district or municipal areas in Bengal the District Boards or Municipal Commissioners have been consulted as to the number or location of liquor shops. It must be possible, no doubt, if the number of liquor shops has been restricted and the District Boards and Municipal Commissioners have been consulted, for the Hon'ble Member in charge of the Bill to place on the table a copy of any such restriction or reference to such local bodies. But even if any restrictions have been issued, is it not a fact that the principle of restriction enunciated by the Government of India has been honoured rather in the breach than in the observance?

"What steps have been taken to ascertain from the municipalities throughout Bengal their opinions as to the number or location of licensed shops within areas under their control? To judge from the 11th paragraph of the Majority Report there have been none. It would appear that the Corporation of Calcutta, not the least important of the various municipal bodies in Bengal, has not been consulted. What is done at present? Simply, according to the Report, when a liquor shop has to be opened at a new site, a notification, four or five days